INTERNATIONAL LAW

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INTERNATIONAL LAW

EIGHTH EDITION

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PREFACE TO THE EIGHTH EDITION

In the preface to the sixth edition, 1915, was the statement "It may not be too much to say that the development of international law within the period since the call for the first Peace Conference at The Hague in 1898 has been greater than during the two hundred and fifty years preceding, from the Peace of Westphalia in 1648 to the call for the Hague Conference in 1898." Since 1914 the principles thought to be generally accepted have been tested by war of unparalleled magnitude and by the resulting unsettled international relations. During the period of the war the assertion "International Law is dead" was frequently heard, but the issue of the war showed the fallacy of acting upon such a belief. Many of the differences between states still remained to be settled, but the evidence is convincing that they must ultimately be settled in accordance with law and justice.

This edition shows that, to a degree unexpected during the strain of war, late decisions, precedents and practice have followed principles long accepted.

Certain conventions and other documents have been inserted in appendices in the conviction that it is more serviceable to read the documents than to read lengthy opinions upon what the documents may mean and also in order that the whole text may be available for reference. The Covenant of the League

of Nations, 1919, the Statute of the Permanent Court of International Justice, 1920, and the Treaty on Submarines and Noxious Gases, 1922, will also be found in the appendices.

Dr. Tucker has offered valuable suggestions in the preparation of this edition, but no longer continues as joint author.

G. G. W.

JULY, 1922.

PREFACE TO THE FIRST EDITION

THE authors have freely used the substantive material as found in cases, codes, etc., which involve the principles of international law. Owing to the increasing importance of international negotiation, relatively more attention than usual has been given to matters connected with diplomacy. The appendices contain material which the authors have found advantageous to have easily accessible to each student. The study of this book should in all cases be supplemented by reference to a considerable number of the books mentioned in the bibliography.

G. G. W.
G. F. T.

SEPTEMBER, 1901.

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ABBREVIATIONS OF CITATIONS

The following are the important abbreviations of citations:

A. J. I. L.	American Journal of International Law, 1907–.
Ann. Cycl.	Appleton's Annual Cyclopædia.
Annuaire	Annuaire de l'Institut de Droit International, 1877–.
Br. & For. St. Pap.	British and Foreign State Papers.
Brussels Code	Conference at Brussels, 1874, on Military Warfare.
Cr.	Cranch's United States Reports.
C. Rob.	Chr. Robinson's English Admiralty Reports.
Fed. Rep.	Federal Reporter.
Gould & Tucker	Gould and Tucker's Notes on the United States Statutes.
Hall	Hall's International Law (6th ed.).
Hertslet	Hertslet Map of Europe by Treaty.
How.	Howard United States Reports.
Instr. U. S. Armies	Instructions for the Government of Armies of the United States in the Field.
Kent's Com.	Kent's Commentaries (14th ed.).
Lawrence	Lawrence's Principles of International Law.
Moore	International Law Digest.
N. W. C.	U. S. Naval War College, International Law Publications, 1901–.
Pet.	Peters's United States Reports.
Schuyler	Schuyler's American Diplomacy.
Scott	Cases on International Law.
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U. S.	United States Supreme Court Reports.
U. S. Com. Sts.	United States Compiled Statutes.
U. S. For. Rel.	United States Foreign Relations.
U. S. Rev. Sts.	United States Revised Statutes.
U. S. Sts. at Large	United States Statutes at Large.
Wall.	Wallace, United States Reports.
Wheat.	Wheaton's United States Reports.
Wheat. D.	Wheaton's International Law (Dana's edition).

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PART ONE

GENERAL AND HISTORICAL

OUTLINE OF CHAPTER I

DEFINITION AND GENERAL SCOPE

1. SUBJECT-MATTER OF INTERNATIONAL LAW.
   - (*a*) From the philosophical standpoint.
   - (*b*) From the scientific standpoint.
2. DIVISIONS.
   - (*a*) Public international law.
   - (*b*) Private international law.
3. SCOPE.

INTERNATIONAL LAW

CHAPTER I

DEFINITION AND GENERAL SCOPE

1. Definition

INTERNATIONAL law[1] may be considered from two points of view, viz.: —

(*a*) From the philosophical point of view, as setting forth the rules and principles which *ought to be observed* in interstate relations.

Philosophical and scientific standpoints.

(*b*) From the scientific point of view, as setting forth the rules and principles which *are* generally observed in interstate relations.

Early writers treated especially of those principles which *ought to be* observed in interstate action, and the wealth of quotation and testimony introduced to establish the validity of principles now considered almost axiomatic is overwhelming. In the days of Ayala, Brunus, Gentilis, Grotius, and Pufendorf, all the argument possible was needed to bring states to submit to these principles. The conditions and relations of states have so changed that at the present time a body of fairly

[1] Wheaton's definition is (Wheaton D., 23): "International law, as understood among civilized nations, may be defined as consisting of those rules of conduct which reason deduces, as consonant to justice, from the nature of the society existing among independent nations; with such definitions and modifications as may be established by general consent." (See also 1 Pradier-Fodéré, pp. 8, 41.)

established rules and principles is observed in interstate action, and forms the subject-matter of international law.[1]

2. Divisions

International law is usually divided into: —

(*a*) Public international law, which treats of the rules and principles which are generally observed in interstate action, and

(*b*) Private international law, which treats of the rules and principles which are observed in cases of conflict of jurisdiction in regard to private rights. These cases are not properly international, and a better term for this branch of knowledge is that given by Judge Story, "The Conflict of Laws."[2]

Public and private international law.

International law, in the true sense, deals only with state affairs.

3. Scope

International law is generally observed by civilized states; some states, even before they were fully opened to western civilization, professed to observe its rules.[3] The expansion of commerce and trade, the introduction of new and rapid means of communication, the diffusion of knowledge through books and travel, the establishment of permanent embassies, the making of many treaties containing the same general provisions, and the whole movement of modern civilization toward unifying the interests of states, has rapidly enlarged the range of international action and the scope of international law. Civilized states, so far as possible, observe the rules of international law in their dealings with uncivilized communities

[1] Hall, introductory chapter.

[2] Dicey, "Conflict of Laws," English, with notes of American cases, by J. B. Moore.

[3] Wheaton's "International Law," translated and made a text-book for Chinese officials in 1864.

which have not yet attained to statehood. International law covers all the relations into which civilized states may come, both peaceful and hostile. In general, its scope should not be extended so as to interfere with domestic affairs or to limit domestic jurisdiction, though it does often limit the economic and commercial action of a given state, and determine to some extent its policy.

OUTLINE OF CHAPTER II

NATURE OF INTERNATIONAL LAW

4. EARLY TERMINOLOGY.
   - (*a*) Use of the term jus naturale.
   - (*b*) Jus gentium defined.
   - (*c*) Use of other terms.

5. HISTORICAL BASES.

6. ETHICAL BASES.

7. JURAL BASES.
   - (*a*) Sanction of Roman law.
   - (*b*) Ethical influence of canon law.
   - (*c*) Practical influence of common law.
   - (*d*) Equity and recognition of principles.
   - (*e*) Admiralty law and maritime relations.

8. INTERNATIONAL LAW AND STATUTE LAW.

9. INTERNATIONAL LAW AND LAW IN GENERAL.

CHAPTER II

NATURE OF INTERNATIONAL LAW

4. Early Terminology

THE conception of those rules and principles of which international law treats has varied greatly with periods, with conditions, and with writers.

The early terminology indicates the vagueness of the conceptions of the principles governing the conduct of man toward his fellows.

(*a*) *Jus naturale* is defined broadly by Ulpian [1] as "the law which nature has taught all living creatures, so as to be common to men and beasts." Grotius also uses this term, defining it as "the dictate of right reason, indicating that any act from its agreement or disagreement with rational nature has in it moral turpitude or moral necessity, and consequently such act is either forbidden or enjoined by God, the author of nature." [2] Lieber says "The law of nature, or natural law . . . is the law, the body of rights, which we deduce from the essential nature of man." [3] The discussion of *jus naturale* has been carried on from an early period,[4] covering many portions of the field of modern international law, and making possible the broadening and strengthening of its foundation.

Use of the term jus naturale.

(*b*) *Jus gentium*, according to Justinian, is "that which natural reason has established among all men, that which

[1] "Institutes," I, 1, 1. [2] "De Jure Belli," Bk. I, Ch. I, § 10.
[3] "Political Ethics," 2d ed., I, p. 68. [4] Maine, "Ancient Law," Ch. IV.

all peoples uniformly regard." [1] "*Jus gentium* is common to the whole human kind." [2] This idea of a body of law common to all men assumed a different meaning when states multiplied, and writer after writer redefined and qualified its meaning. *Jus gentium* became the subject of many controversies.[3] Among the qualifying terms were "internal," "necessary," "natural," "positive."

Jus gentium defined.

(*c*) Other terms were used to name the field or portions of the field of modern international law. *Jus fetiale* applied particularly to the declaration of war and sanction of treaties.[4] *Jus inter gentes* was used by Zouch in 1650 to name the real field of international law. *Law of nations* was the term commonly used in England till the days of Bentham; since that time the term *international law*, which he adopted, has steadily grown in favor, until it has come into almost universal use in English-speaking countries.[5]

Use of other terms.

The change in terminology shows in a measure the progress in demarking the field of international law.

5. Historical Bases

International law in its beginning may have been largely determined by abstract reasoning upon what *ought to be* the principles and rules governing interstate relations; but in its later development, as it has become more and more recognized as a safe guide for the conduct of states in their relations with other states, direct investigation of what *is* has determined the character of the rules and principles. What *is* state practice in a given case can be determined only by reference to history. From the history of cases and practice, the

[1] "Institutes," I, 2, 1.
[2] *Ibid.*, I, 2, 2.
[3] Heffter, "Völkerrecht," § 2.
[4] Cicero, "De Republica," 2, 17.
[5] *Droit international* is the French term, subsequently adopted.

general rule and principle is derived, and modern international law thus comes to rest largely upon historical bases.

6. Ethical Bases

While international law now looks to history as one of its most important bases, it must nevertheless accord somewhat closely with the ethical standards of the time, and will tend to approximate to them. The growth of the body of law upon slavery has rested on both ethical and historical bases. International law is principally an output of civilized nations having certain ethical standards. Such ancient practices as the giving of hostages for the fulfillment of treaty stipulations have disappeared, and ethical bases are generally recognized in determining practice.[1] While these ethical bases should be recognized, international law cannot be deduced from subtle reasoning upon the abstract ideas of what it *ought to be.* Modern international law treats mainly of what *is,* but what *is* in international relations is always conditioned by a recognition of what *ought to be.*

7. Jural Bases

The nature of modern international law is in part due to the jural bases upon which it rests.

(*a*) The Roman law was the most potent influence in determining the early development, particularly in respect to dominion and acquisition of territory. International law gained a certain dignity and weight from its relation to the Roman law, the most potent legal institution in history.

Sanction of Roman law.

(*b*) The canon law, as the law of the ecclesiastics who were supposed to recognize the broadest principles of human unity, gave an ethical element to early international law. Gregory IX

[1] Last hostages given in Europe 1748, by England to France.

(1227–1241), the Justinian of the Church, reduced canon law to a code. The abstract reasoning upon its principles among the clergy and counselors of kings, made it a part of the mental stock of the early text writers, while it strongly influenced state practice. The canon law gave a quasi-religious sanction to its observance, and in so far as international law embodied its principles, gave the same sanction to the observance of international equity. This may be seen in the religious formula in treaties, even to a late date.

Ethical influence of canon law.

(*c*) The common law, itself international as according to tradition, derived by Edward the Confessor from three systems, and subsequently modified by custom, furnished a practical element in determining the nature of international law.

Practical influence of common law.

(*d*) Equity promoted the development of the recognition of principles in international law. In the early days of England cases arose which were not within the cognizance of the common law judges. The petitioner having applied to the king in Parliament or in council for justice, his petition was referred to the chancellor, the keeper of the king's conscience, who, after a hearing, required that what was equitable should be done. Thus the simpler matters came before the common law court, the more difficult before the equity court. Even now a jury largely deals with questions relating to the recovery of money, and their decision is a *verdict*, which is followed by a judgment. In an equity court, the more difficult problems of business and commerce are considered; and the decision of the judge is a *decree*.

Equity and recognition of principles.

(*e*) Admiralty law may be defined as in one sense the law of the sea. Anterior to and during the Middle Ages, the maritime relations of states gave rise to sea laws, many of which are to-day well-recognized principles of international law.

Admiralty law and maritime relations.

8. International Law and Statute Law

Statute law proceeds from legislative enactment, and is enforced by the power of the enacting state within its jurisdiction.

International law, on the other hand, is not formally enacted, and has no tribunal with an effective sanction for its enforcement. In case of infraction of its rules nations may resort to war, when the issue may rather depend upon the relative strength of the two states than upon the justice of the cause, or the states may agree to refer their differences to some form of adjudication by an international tribunal.

9. International Law and Law in General

If law is defined, as by Austin, "a rule laid down for the guidance of an intelligent being by an intelligent being having power over him," [1] it would not be possible to include under it international law without undue liberality in the interpretation of the language.

In form, however, law is a body of rules and principles in accord with which phenomena take place. If these rules, as enunciated by the state in case of statute law, are not followed, certain penalties are inflicted. The nature of the penalty must to a great extent depend on the source of the law. International law is the body of rules and principles relating to interstate phenomena. Violations of international law are not followed by the same penalties as those of statute law, as international law does not have the same source nor a similar tribunal for its enforcement. International law is, however, in form law and in practice so regarded.[2]

[1] "Lectures on Jurisprudence," I.

[2] Walker, "Science of International Law," Chs. I and II, fully discusses Austin's definition. For decisions of the highest courts see West Rand Gold Mining Co. *v.* The King, L. R. 2 K. B. (1905), 391; The Paquete Habana (1900), 175 U. S. 677; The Zamora (1916), 2 A. C. 77.

OUTLINE OF CHAPTER III

HISTORICAL DEVELOPMENT

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    - (*a*) Recognition by Greece of international obligations.
    - (*b*) Rome's contribution to international law

11. MIDDLE PERIOD.
    - (*a*) Supremacy of Roman Empire.
    - (*b*) Unifying influence of the Church.
    - (*c*) Feudalism and the territorial basis of sovereignty.
    - (*d*) Crusades and a broader basis of comity.
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    - (*g*) Consuls and the development of maritime law.
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12. MODERN PERIOD FROM 1648.
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        - (1) The First Peace Conference at The Hague.
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    - (*e*) 1914 to present time: New tests.

13. INFLUENCE OF THE UNITED STATES.
    (*a*) The regulations of 1793 in regard to neutrality.
    (*b*) Freedom of commerce and navigation.
    (*c*) Open-door policy in the Far East.
    (*d*) Protection of legitimate rights of citizens.
    (*e*) Contributions to establishment of laws of war.
    (*f*) Advocacy of peaceful settlement of international disputes.
    (*g*) The United States and the World War.

14. WRITERS.
    (*a*) Life and work of Hugo Grotius (1583–1645).
    (*b*) Other authorities on international law.

CHAPTER III

HISTORICAL DEVELOPMENT

10. Early Period

THE history of the development of those rules and principles now considered in international law naturally falls into three periods, early, middle, and modern.[1]

The early period dates from the development of early European civilization, and extends to the beginning of the Christian Era. During this period the germs of the present system appear.[2]

(*a*) The dispersion of the Greeks in many colonies which became practically independent communities gave rise to systems of intercourse involving the recognition of general obligations.[3] The maritime law of Rhodes is an instance of the general acceptance of common principles. The main body of this law has not survived, yet the fragment appearing in the Digest, *De Lege Rhodia de Jactu*,[4] is, after more than two thousand

Recognition by Greece of international obligations.

[1] Bluntschli, "Völkerrecht," Introduction; Lawrence, § 20.

[2] Walker, "Science of International Law," Ch. III, p. 58. "But when, beside the vague and fleeting World Law, the law of all humanity, was recognized a law special to certain peoples, when the distinction was drawn between the progressive and the stationary, between civilization and barbarity, when the Greek noted τὰ νόμιμα τῶν Ἑλλήνων, and the Roman felt the ties of a particular *Jus Fetiale* and a particular *Jus Belli*, International Law cast off its swaddling bands, and began its walk on earth."

[3] Cicero, "Pro Lege Manilia," Ch. XIII.

[4] Justinian, Digest, 14. 2, "If goods are thrown overboard to lighten the ship, as this is done for the sake of all, the loss shall be made good by a contribution of all."

years, the basis of the present doctrine of jettison. It is reasonable to suppose that though the words of other portions of the Rhodian law are lost, the principles may have entered into formation of later compilations. The recognition by Greece of the existence of other independent states, and the relations into which the states entered, developed crude forms of international comity, as in the sending and receiving of ambassadors [1] and the formation of alliances.[2]

Rome's contribution to international law.

(*b*) Rome made many contributions to the principles of international law in the way of the extension of her own laws to wider spheres, and in the attempt to adapt Roman laws to conditions in remote territories. In this early period Rome may be said to have contributed to the field of what is now considered private international law rather than to that of public international law. Wherever Rome extended her political rule, she adapted her laws to the peoples brought under her sway. This is evident in the laws in regard to marriage, contract, property, etc. The dominance of Rome impressed her laws on others, and extended the influence of those principles which, from general practice, or conformity to accepted standards, gained the name *Jus Gentium*.[3]

[1] Bluntschli, "Völkerrecht," Introduction; Thucydides, "Peloponnesian War," II, 12, 22, 29.

[2] The Amphictyonic League recognized some principles of interstate right and comity, as well as preserved Grecian institutions and religious traditions. This is shown in the oath of the members, "We will not destroy any Amphictyonic town nor cut it off from running water, in war or peace; if any one shall do this, we will march against him and destroy his city. If any one shall plunder the property of the god, or shall be cognizant thereof, or shall take treacherous counsel against the things in his temple at Delphi, we will punish him with foot and hand and voice, and by every means in our power." They also agreed to make and observe humane rules of warfare. See also Darby. "International Tribunals," p. 1.

[3] Maine, "Ancient Law," Ch. III. The idea as to what *jus gentium* was of course varied with times. Under the Empire it lost its old meaning. See Cicero, "De Officiis," III, 17; Livy, VI, 17; IX, 11; I, 14; V, 36; Sallust, "Bell. Jug.," XXII; Tacitus, "Ann.," 1, 42; "Quintus Curtius," IV, 11, 17.

11. Middle Period

The varied struggles of the middle period — from the beginning of the Christian Era to the middle of the seventeenth century — had a decided influence upon the body and form of international law.

(*a*) The growth of the Roman Empire, as the single world-power and sole source of political authority, left small need of international standards. The appeal in case of disagreement was not to such standards, but to Cæsar. The idea of one common supremacy was deep-rooted. Political assimilation followed the extension of political privileges.

Supremacy of Roman Empire.

(*b*) A similar unifying influence was found in the growth of the Christian Church, which knew no distinction — bond or free, Jew or Gentile. Christianity, called to be the state religion early in the fourth century, modeled its organization on that of the Roman Empire; and from the sixth century, with the decay of the Empire, the Church became the great power. The belief in the permanent continuance and universality of Roman dominion was strengthened by the Church, although materially changed in its nature.[1] Whatever the inconsistencies in Church and State during the first ten centuries of our era, there had grown up the idea, of great importance for international law, that there could be a ground upon which all might meet, a belief which all might accept, both in regard to political and religious organization. For five hundred years before the days of Boniface VIII (1294–1303), the holder of the papal office had from time to time acted as an international judge.

Unifying influence of the Church.

The canon law codified by Gregory IX (1227–1241), was planned to rival the Corpus Juris Civilis. The Popes, with varying degrees of success, tried to render such international

[1] Bryce, "Holy Roman Empire," Ch. VII.

justice as the discordant elements introduced by the growth of cities and rise of nationalities demanded.[1] From the Council of Constance (1414–1418), which was a recognition of the fact of nationality, and at which the emperor for the last time appeared as the great international head, the decline of both the Church and the Empire as direct international factors was rapid.

(*c*) By the eleventh century feudalism had enmeshed both the temporal and spiritual authorities. This system, closely related to the possession of land and gradation of classes, discouraged the development of the ideas of equality of state powers necessary for the development of international law, though it did emphasize the doctrine of sovereignty as based on land in distinction from the personal sovereignty of earlier days.

Fuedalism and the territorial basis of sovereignty.

(*d*) The Crusades (1096–1270), uniting Christendom against the Saracen for foreign intervention, awakening Europe to a new civilization, expanding the study and practice of the Roman law which feudal courts had checked, weakening many feudal overlords, enfranchising towns, freeing the third estate, spreading the use of the Latin language, enlarging and diversifying commerce, teaching the possible unity of national interests, led to the apprehension of a broader basis in comity which hastened the growth of interstate relations.[2]

Crusades and a broader basis in comity.

(*e*) The code of chivalry and the respect for honor which it enjoined introduced a basis of equitable dealing which on account of the international character of the orders of chivalry reacted upon state practice throughout Christian Europe.

Chivalry and a basis of equitable dealing.

[1] Bryce, " Holy Roman Empire," Chs. VII and XV. The " Truce of God," introduced by the clergy (1034), left only about eighty days in a year for fighting and settling feuds.

[2] On effects of Crusades, see Milman, " Latin Christianity," VII, 6; Hallam, " Middle Ages," Ch. III, Pt. I; Bryce, " Holy Roman Empire," Chs. XI, XIII.

(*f*) The expansion of commerce, especially maritime, emphasized the duties and rights of nations. The old Rhodian laws of commerce, which had in part been incorporated in and expanded by the Roman code during the days before the overthrow of the Empire, formed a basis for maritime intercourse. From the fall of the Empire to the Crusades commerce was attended with great dangers from pirates on the sea and from exactions in the port. The so-called *Amalfitan Tables* seem to have been the sea law of the latter part of the eleventh century. The much more detailed *Consolato del Mare*, probably issued in Barcelona in the fourteenth century, derived some of its principles from earlier codes. The *Consolato* was recognized by maritime powers as generally binding, and made possible wide commercial intercourse. Many of its principles have stood to the present day, though touching such questions as the mutual rights of neutrals and belligerents on the sea in time of war. As the *Consolato* formed the code of Southern Europe, the *Laws of Oléron* formed the maritime code for Western Europe, and were compiled the latter part of the twelfth century, whether by Richard I or by his mother, Queen Eleanor, is a disputed question. These laws are based in large measure on the other existing systems. The *Laws of Wisby*, dating from about 1288, supplemented the *Laws of Oléron*, and formed the fundamental law of maritime courts of the Baltic nations.[1] The Hanseatic League in 1591 compiled a system of marine law, *Jus Hanseaticum Maritimum*,[2] based on the codes of Western and Northern Europe. The maritime law of Europe had been practically unchanged for nearly a hundred years, when systematized in 1673 under Louis XIV. Similar to the maritime codes are the "Customs of Amsterdam," the "Laws of Antwerp," and the "Guidon de la Mar."

Expansion of commerce and the development of maritime codes.

[1] Laws of Wisby contain early reference to marine insurance, § 66. 1 Pet. Adm. App. LXVII. [2] Expanded in 1614. *Ibid.*, App. XCIII.

(*g*) Closely connected with the development of maritime law during the latter part of the middle period was the establishment of the office of consul. The consuls, under the title of *consules marinariorum et mercatorum*, resident in foreign countries, assisted by advice and information the merchants of their own countries, and endeavored to secure to their countrymen such rights and privileges as possible. Consuls seem to have been sent by Pisa early in the eleventh century, and were for some time mainly sent by the Mediterranean countries to the East.

Consuls and the development of maritime law.

(*h*) The discovery of America marked a new epoch in territorial and mercantile expansion, and introduced new problems among those handed down from an age of political chaos.

Discovery of America.

(*i*) The middle period, with all its inconsistencies in theory and practice, had nevertheless taught men some lessons. The world-empire of Rome showed a common political sovereignty by which the acts of remote territories might be regulated; the world-religion of the Church of the middle period added the idea of a common bond of humanity. Both of these conceptions imbued men's minds with the possibility of a unity, but a unity in which all other powers should be subordinate to a single power, and not a unity of several sovereign powers acting on established principles. The feudal system emphasized the territorial basis of sovereignty. The Crusades gave to the Christian peoples of Europe a knowledge and tolerance of one another which the honor of the code of chivalry made more beneficent, while the growth of the free cities opposed the dominance of classes, feudal or religious. The fluctuations and uncertainties in theory and practice of international intercourse, both in peace and war, made men ready to hear the voice of Grotius (1583–1645), whose work marks the beginning of the modern period.

Contributions of the middle period.

12. Modern Period (1648–)

The modern period of international law may be divided into five epochs: (*a*) From the Peace of Westphalia, 1648, to the Peace of Utrecht, 1713; (*b*) from the Peace of Utrecht, 1713, to the Congress of Vienna, 1815; (*c*) from the Congress of Vienna, 1815, to the call for the First Hague Peace Conference, 1898; (*d*) from the call for the First Hague Peace Conference, 1898, to 1914; (*e*) from 1914 to the present time.

1648–1713: Development of principles.

(*a*) It became evident at the termination of the Thirty Years' War in 1648 that the old doctrines of world-empire, whether of Pope or of Emperor, could no longer be sustained. The provisions of the Peace of Westphalia, while not creating a code to govern international relations, did give legal recognition to the existence of many such conditions as Grotius contemplated in "De Jure Belli ac Pacis," in regard to the relations of states regardless of area and power. The decree of James I, in 1604, establishing a neutral zone by "a straight line drawn from one point to another about the realm of England," in which neither of the parties to the war between the United Provinces and Spain should carry on hostilities, formed a precedent in maritime jurisdiction, even though the decree was but imperfectly enforced. This early part of the modern period was especially fruitful in treatises and discussions upon the nature of international law, and upon what it *ought to be*, and also upon the law of the sea, particularly Grotius's "Mare Liberum," 1609, Selden's "Mare Clausum," 1635, and Bynkershoek's "De Dominio Maris," 1702.[1] During this period the public law was diligently studied; the right of legation became generally recognized; French gradually took the place of Latin in international intercourse,[2] with a corresponding modern spirit in

[1] The Marine Ordinance of Louis XIV, 1681, became the basis of sea law.

[2] With the decline of the influence of the "Holy Roman Empire," the use of Latin in diplomacy became less general.

the practice, though the discussions were usually ponderous and abstract; the idea of the balance of power flourished and formed a subject of frequent controversy; the principle of intervention upon political grounds was propounded and acknowledged; and the opinions of the great publicists, such as Grotius, gained weight and were widely studied. The general principles of neutral trade, including "free ships, free goods," were laid down; prize laws and provisions as to contraband were adopted; numerous treaties of commerce gave witness of the growth of international intercourse; and both men and states became somewhat more tolerant.

(*b*) The Treaty of Utrecht (1713) gave recognition to many of the principles which had become fairly well accepted during the years since 1648. There were evidences of the growing influences of the New World upon the policy of the Old; the American fisheries question appeared; the international regulations in regard to commerce were multiplied; and the central subject of the preamble was a provision on "the balance of power."[1] For many years the question of succession to the various seats of royal and princely power formed the chief subject of international discussion. During the eighteenth century the steady growth of England as a maritime power and the European complications over trans-Atlantic possessions gave rise to new international issues. The basis of modern territorial acquisition was found in the Roman law of *occupatio*, and the Roman law of river boundaries was almost exactly followed.[2] From the Treaty of Aix-la-Chapelle (1748), in which former treaties were generally renewed, to 1815, the growth and observation of the principles of international law was spasmodic. By the Peace of Paris and by the Peace of Hubertsburg (1763), many questions of territo-

1713–1815: Testing of principles.

[1] Abbé Saint-Pierre, in three volumes, 1729, "Abrégé du Projet de Paix perpétuelle," outlines a plan for peace by fixed system of balance of power.

[2] "Institutes," II, 1, 21, 22.

rial jurisdiction were settled. England, then become the dominant power in North America, with greatly extended power in the East, impressed upon international practice adherence to actual precedent rather than to theoretically correct principles. At the same time in Central Europe the conditions were ripe for that violation of international justice, the partition of Poland in 1772, followed by the further partition in 1793 and 1795. The rights which the concert of nations was thought to hold sacred were the very ones most ruthlessly violated by the neighboring powers. The American Revolution of 1776 and the French Revolution of 1789 introduced new principles. The "armed neutrality" of 1780,[1] while maintaining the principle, "free ships, free goods," made impossible the converse, "enemy's ships, enemy's goods," which had been held. Both the American and French Revolutions made evident the necessity of the development of the laws of neutrality hitherto greatly confused and disregarded.[2] During the French Revolution it seemed that to Great Britain alone could the states of Europe look for the practice of the principles of international law. After the French Revolution it was necessary to define *just intervention* that Europe might not be again convulsed. It became clear that the state was an entity and distinct from the person of its king. No longer could the king of France or of any European state say "L'état, c'est moi." Even though personal selfishness of monarchs might pervade the Congress of Vienna, the spirit of nationality could not long be restrained. The period from 1713 to 1815 had tested the general principles propounded during the seventeenth century, and it was found necessary to expand their interpretation, while the growth of commerce and intercourse made necessary new laws of neutrality and new principles of comity, such as were in part laid

[1] Declaration of Russia, Feb. 28, 1780.

[2] The works of Moser (1701–1786) and his immediate followers attempt to make practical the principles of international law.

down in the early days of the nineteenth century, as seen in the resistance to the right of search, the declaration against African slave trade, establishment of freedom of river navigation, improved regulations in regard to trade in time of war, neutralization of Switzerland, placing of a protectorate over the Ionian Islands, and determination of precedence and dignities of the various diplomatic agents and the states which they represented. By the year 1815 the theory of the seventeenth century had been severely tested by the practice of the eighteenth century, and it remained for the nineteenth century to profit by the two centuries of modern political experience.

(*c*) The Peace of Westphalia (1648), the Peace of Utrecht (1713), and the Treaty of Vienna (1815) are the three celebrated cases of combined action of modern European powers. The "balance of power" idea had gradually been supplemented by "the concert of the powers" idea, which would not merely maintain the relative *status quo* of "the balance," but might enter upon a positive policy of concerted action. The "Holy Alliance" of 1815, to promote "Justice, Christian Charity, and Peace," [1] was first broken by its originators. There was a strong feeling that the principles of international law should be followed, however, and this, the "Declaration of the Five Cabinets," November 15, 1818, distinctly avowed in "their invariable resolution, never to depart, either among themselves, or in their relations with other states, from the strictest observation of the principles of the Rights of Nations." [2] The attempt to extend the principle of intervention in favor of maintaining the various sovereigns on their thrones, and in suppression of internal revolutionary disturbances by foreign force was made in the "Circular of the Three Powers," December 8, 1820.[3] Under many forms intervention was one of the great questions of the nineteenth century, and the growing

1815–1898: Practical application of principles.

[1] I Hertslet, 317. [2] *Ibid.*, 573. [3] *Ibid.*, 658.

proximity and the multiplication of relations of states during that century added many complications.[1] The Grecian War of Independence (1821–1829) brought the new principle of pacific blockade (1827), and at its conclusion the powers guaranteed the sovereignty of Greece. Such matters as right of search, foreign enlistment, Monroe Doctrine, freedom of commerce and navigation, expatriation, extradition, neutralized territory, ship canals, consular rights, neutral rights and duties, arbitration, reciprocity, mixed courts, international postage, weights and measures, trade-marks and copyright, rules of war, submarine cables, and sphere of influence, which came to the front during the nineteenth century, indicate in a measure the subject-matter of international negotiation. Throughout the period since 1815 tendency has been rather to regard what *is* the international practice.

(*d*) At the reception of the diplomats at the Foreign Office, St. Petersburg, August 12 (24), 1898, Count Mouravieff handed to each foreign representative a document setting forth at some length the burdens imposed by war and by the preparations for war and expressing the hope that the time was come "to put an end to incessant armaments." This document of Count Mouravieff further declares that, "Filled with this idea, His Majesty has been pleased to order me to propose to all the Governments whose representatives are accredited to the Imperial Court, the meeting of a conference which would have to occupy itself with this grave problem.

1898 to 1914: Progress toward international peace.

"This conference should be, by the help of God, a happy presage for the century which is about to open. It would converge in one powerful focus the efforts of all States which are sincerely seeking to make the great idea of universal peace triumph over the elements of trouble and discord.

"It would, at the same time, confirm their agreement by

[1] I Oppenheim, 221.

the solemn establishment of the principles of justice and right, upon which repose the security of States and the welfare of peoples."

This proposition by the Czar of Russia for an international peace conference marks the beginning of a new epoch for international law and international relations; an epoch in which the endeavor is to substitute the reign of reason for that of force. It was fully recognized that agreement upon the law which should hold among nations would be the first great step toward peace.

The suggested program for the conference of the powers referred to (1) the limitation of armaments; (2) prohibition of new means of injuring an enemy; (3) prohibition of new explosives and of throwing projectiles from balloons, etc.; (4) prohibition of submarine boats and rams; (5) extension of the provisions of the Geneva Convention of 1864 to naval warfare; (6) neutralization of vessels rescuing shipwrecked; (7) revision of Declaration of Brussels, 1874, as to laws of war on land, and (8) matters of good offices, mediation and arbitration.

The First Peace Conference at The Hague.

This Conference, representing twenty-six states, which is now known as the First International Peace Conference at The Hague, assembled at The Hague on May 18, 1899, and held its sessions at the House in the Woods. It concluded its labors on July 29, 1899.

This Conference formulated three conventions and three declarations.

Conventions: (1) Pacific settlement of international disputes, (2) laws and customs of war on land, (3) adaptation to maritime warfare of the principles of the Geneva Convention of August 22, 1864.

Declarations: (1) To prohibit the launching of projectiles and explosives from balloons or by other similar new methods. (2) To prohibit the use of projectiles, the only object of which is the diffusion of asphyxiating or deleterious gases. (3) To

prohibit the use of bullets which expand or flatten easily in the human body, such as bullets with a hard envelope, of which the envelope does not entirely cover the core, or is pierced with incisions.

The Conference adopted a resolution favoring the restriction of military charges.

The Conference expressed wishes (1) for the early revision of the Geneva Convention of 1864, (2) for the consideration of the rights and duties of neutrals by a subsequent conference, (3) for further study of the limitation of the effectiveness of arms, (4) for the further consideration of the limitation of armaments, (5) for reference of question of inviolability of private property at sea to a subsequent conference, (6) for similar reference of the question of bombardment of coast towns and villages.

Results of the First Peace Conference.

While the results of this First International Peace Conference were at first regarded as insignificant, their value was soon evident. The United States led in submitting causes to the Court of Arbitration, and the worth of the plans of the Conference was shown in the peaceful adjustment of the threatened difficulties between Great Britain and Russia over the Dogger Bank affair during the Russo-Japanese War in 1904.

The suggested Conference for the revision of the Geneva Convention assembled at Geneva June 11, 1906, and completed its labors of revision on July 10, 1906.

The value of such conferences as that called at The Hague in 1899 was so well established that according to the preamble of the Final Act, "The Second International Peace Conference, proposed in the first instance by the President of the United States of America, having been convoked, on the invitation of His Majesty, the Emperor of All the Russias, by Her Majesty, the Queen of the Netherlands, assembled on the 15th June, 1907, at The Hague, in the Hall of the Knights, for the purpose of

giving a fresh development to the humanitarian principles which served as a basis for the work of the First Conference of 1899."

This Second International Peace Conference at The Hague, representing forty-four states, concluded thirteen conventions and one declaration.

The Second Peace Conference at The Hague and its conventions.

Conventions: (1) Pacific settlement of international disputes, (2) limitation of employment of force for recovery of contract debts, (3) opening of hostilities, (4) laws and customs of war on land, (5) rights and duties of neutral powers and persons in case of war on land, (6) status of enemy merchant ships at outbreak of hostilities, (7) conversion of merchant ships into war ships, (8) laying of automatic submarine contact mines, (9) bombardment by naval forces, (10) adaptation of principles of Geneva Convention to naval war, (11) restriction of right to capture in naval war, (12) international prize court, (13) rights and duties of neutral powers in naval war.

Declaration: Prohibiting the discharge of projectiles and explosives from balloons.

This Conference of 1907 also pronounced in favor of the principle of compulsory arbitration, expressed opinion on several other matters and recommended the assembling of a Third International Peace Conference after a period corresponding to that which elapsed between the First and Second Conferences. This Conference did not meet in 1915 on account of the outbreak of the World War.

The International Naval Conference of 1908–09 and Declaration of London, 1909.

In 1908 Great Britain invited a conference of naval powers to determine upon the rules for war upon the sea in order that the International Prize Court Convention might be ratified by certain powers who were reluctant to accept the Convention "so long as vagueness and uncertainty exist as to the principles which the Court, in dealing with appeals brought before it, would apply to questions of far-reaching importance affecting

naval policy and practice." This International Naval Conference met at London, December 4, 1908, and concluded the Declaration of London concerning the Laws of Naval War, February 26, 1909.

The period 1898–1914 was especially one of formulation of law by conventional agreement. International conventions [1] made clear the law in some instances, reconciled differing practices, set forth principles to govern new conditions, and in general embodied the idea that the relations among states should be based upon equitable law.

Contributions of this period to international law.

(*e*) From August, 1914, international law, particularly as relating to hostilities, was tested by the World War. The test showed the weakness and lack of adaptability to modern conditions of some of these conventions, while strengthening confidence in many of the long-recognized underlying principles of international law. The states of the world emerged from the war desirous of a stable peace. The preamble of the Covenant of the League of Nations which forms Part I of the Treaty of Peace of June 28, 1919, declares that the High Contracting Parties agree to the Covenant "in order to promote international coöperation and to achieve international peace and security by the acceptance of obligations not to resort to war, by the prescription of open, just, and honorable relations between nations, by the firm establishment of the understandings of international law as the actual rule of conduct among Governments, and by the maintenance of justice and a scrupulous respect for all treaty obligations in the dealings of organized peoples with one another."

1914: — New Tests.

The League of Nations organized and endeavored to carry out these objects. To that end various measures were taken,

[1] For texts see Scott, "Texts of the Peace Conferences at The Hague, 1899 and 1907"; Higgins, "The Hague Peace Conferences"; see also appendices post pp. lxi *et seq.*

and among other instrumentalities a permanent court of international justice was established in 1922. Resort to conferences of powers for the adjustment of international problems became common. The Washington Conference on Limitation of Armament, which also deliberated upon questions of the Pacific and the Far East in 1921–22, negotiated seven treaties and twelve resolutions aiming to reduce competitive preparation for war and to remove many actual and prospective causes of international differences. Far more than hitherto the negotiations were carried on under "the revealing light of the public opinion of the world" when there were no victors and no vanquished and when "the very atmosphere shamed national selfishness into retreat." Other conferences with view to settling existing difficulties or providing against possible differences among states followed.

13. Influence of the United States

The United States of America for many years after 1776 occupied a position to a considerable extent apart from European influences. It developed, therefore, ideas in regard to international relations which showed the influence of general principles as well as the influence of national policy.

(*a*) The regulations in regard to neutrality issued in 1793 set forth the principles which have subsequently become generally recognized. Of this contribution toward the development of international law Hall says: "The policy of the United States in 1793 constitutes an epoch in the development of the usages of neutrality. There can be no doubt that it was intended and believed to give effect to the obligations then incumbent upon neutrals. But it represented by far the most advanced existing opinions as to what those obligations were; and in some points it even went further than authoritative international custom has up to the present time advanced.

The regulations of 1793 in regard to neutrality.

In the main, however, it is identical with the standard of conduct which is now adopted by the community of nations." [1]

(*b*) The United States has also consistently advocated the freedom of commerce and navigation. Many claims for exclusive rights over rivers, gulfs, and other bodies of water were resisted by the United States from the time of the acquisition of statehood. The United States early insisted upon the freedom of navigation of the Scheldt. In the definitive treaty of peace with Great Britain in 1783, Article 8, it was provided that "The navigation of the River Mississippi from its source to the ocean, shall forever remain free and open to the Subjects of Great Britain, and the Citizens of the United States." The negotiations of the United States for securing freedom of river navigation were based upon the natural right, but for many years the arguments of the representatives received slight consideration. The Sound Dues, which Denmark had for centuries collected from vessels passing between the North and the Baltic seas, were a heavy burden on commerce. Henry Wheaton, subsequently to become one of the foremost authorities in international law, while United States Minister to Denmark from 1827 to 1835, reported to the Department of State upon the subject of these dues. The United States then contended that "Denmark cannot lay claim to these duties upon any principle either of nature or of the law of nations nor from any other reason than that of antiquated custom." While maintaining that Denmark had no right to collect tolls because of her geographical position, the United States did admit that a reasonable return might justly be made "for the improvement and safety of the navigation of the Sound or Belts." The United States, by the treaty of April 11, 1857, paid $393,011 in consideration of Denmark's agreement to keep up lights, buoys, and pilot establishments.

Freedom of commerce and navigation.

[1] Hall, p. 632.

The United States has also always questioned the right of any state or states to forbid access to the Black Sea and has protested against the restrictions placed upon the navigation of some of the South American rivers. The principle of freedom of navigation for which the United States had so often contended was fully recognized in the Kongo in the latter part of the nineteenth century.

Open-door policy in the Far East.

(*c*) The United States has also uniformly striven for the largest possible freedom of trade routes, as in the maintenance of the policy of the "open door" in the Far East, particularly since 1899.[1]

Protection of legitimate rights of citizens.

(*d*) It has protected its citizens in their legitimate rights and against oppression and arbitrary measures, as against the Barbary Powers in the early nineteenth century, and in 1904 when Perdicaris, an American citizen, being deprived of his freedom by the bandit Raisuli, Secretary Hay informed Morocco that "this Government wants Perdicaris alive or Raisuli dead."[2]

Contributions to establishment of laws of war.

(*e*) The United States has contributed much toward the establishing of the laws of war both upon the land and upon the sea. The Instructions for the Government of Armies of the United States in the Field, prepared by Dr. Lieber in 1863, have served as the basis for the modern rules for warfare on land. At the Hague Conference of 1907 an earnest attempt was made to secure the exemption from capture of private property at sea, in accord with the traditional attitude of the United States. The Supreme Court in 1899 said: "It is, as we think, historically accurate to say that this Government has always been, in its views, among the most advanced of the governments of the world in favor of mitigating, as to all non-combatants, the hardships and horrors of war."[3]

[1] U. S. For. Rel., 1899, p. 128.
[2] *Ibid.*, 1904, p. 508.
[3] The Buena Ventura, 175 U. S., 384.

(*f*) In the United States there have always been many advocates of the peaceful methods of settlement of international disputes. Such method was provided for the settlement of differences among the states of the United States by the Articles of Confederation in 1778. Commissions were frequently appointed by the United States for settlement of difficulties with foreign states. Specific provision was made in a treaty with Tripoli in 1796, that in case of dispute arising under the treaty, neither party should appeal to arms, "nor shall war be declared on any pretext whatever," and by Article 15 of the treaty of 1805, a year shall be given for the adjustment of the difficulty, "during which time no act of hostility shall be permitted by either party." These provisions resemble those of the "Advancement of Peace Treaties" of the early twentieth century which the United States negotiated with many states. At strictly American conferences, and at The Hague in 1899 and in 1907, the United States representatives gave cordial support to the extension of arbitration and judicial settlement of international disputes.

Advocacy of peaceful settlement of international disputes.

(*g*) In the World War of 1914, the United States endeavored to secure the recognition of established principles and pursued a policy of forbearance toward the belligerents, the declaration of war of April 6, 1917, stating that the war had been "thrust upon the United States." In the treaties concluding peace with Austria, Hungary, and Germany, August, 1921, the United States endeavored to avoid obligations other than it should itself specifically elect.

The United States and the World War.

14. Writers

Among the writers upon subjects connected with international law before the days of Grotius the most prominent are Victoria (1480–1546), Ayala (1548–1584), Suarez (1548–1617),

and Gentilis (1552–1608). While in many respects their contributions to the science were valuable, the work of Grotius stands out preëminent among all the early writers.

(*a*) Hugo Grotius (1583–1645), the scholar, jurist and statesman, was born in Delft, April 10, 1583. Of good family, he was extremely precocious, acquiring prodigious learning in many branches. At fifteen he went with a special embassy to France; at twenty he was historiographer to the United Provinces, and at twenty-five advocate-general of the fisc of Holland and Zealand. The next year he married Mary van Riegesberg, a worthy helpmeet, and at thirty he became pensionary of the city of Rotterdam as well as one of a deputation to England to settle maritime disputes. In 1619, however, on account of his active part in religious controversies, he was sentenced to imprisonment for life, and his property was confiscated. Two years later, through the cleverness of his wife, he escaped to Paris, where he spent days of adversity and study. In 1625 " De Jure Belli ac Pacis " was published; it brought no profit, but immediate and lasting fame. Disappointed in his hope to return to permanent residence in Holland, he was appointed Swedish ambassador at the French Court in 1635. Declining further service in 1645, he retired, honored in all lands. He died from the effects of hardships encountered in the journey to his native land, at Rostock, August 28, 1645.[1]

Life and work of Hugo Grotius (1583–1645).

Grotius's " De Jure Belli ac Pacis," 1625, is an attempt to bring into a systematic treatment those principles which have since become known as international law. Rich in quotations, it touches upon many other subjects, and its broad philosophical basis gives it permanent value. Conditions in Europe at the time when the work appeared gave it immediate and powerful influence in determining the course of modern political history. Of course, many of the principles expounded

[1] Walker, " Hist. Law of Nations," pp. 283, 336.

by Grotius are no longer applicable, and many new principles, such as the doctrine of neutrality, have gained recognition. Nevertheless, upon the foundation laid by Grotius, the modern science has been largely built.

(*b*) Zouch (1589-1660), a successor of Gentilis, as professor of Roman Law at Oxford, while a follower of Grotius in matter and method, deserves mention for his distinction between *jus gentium* and that law to which he gives the name *jus inter gentes*, in the French translation called *droit entre les gens*, later *droit international*, and in the English, law of nations, and since the latter part of the eighteenth century when Bentham led the way, international law.

Other authorities on international law.

Pufendorf (1632–1694), in his voluminous works in general follows Grotius.

Toward the end of the seventeenth century, a school opposing the earlier writers arose. This school, headed by Rachel (1628–1691), assigned a stronger authority to the principles of international law, and gave more attention to usage, whether tacitly admitted or plainly expressed, and to compacts.

Bynkershoek (1673–1743), limiting his work to particular subjects in international law, gave to the eighteenth century several authoritative treatises which are justly regarded as of the highest worth. He especially defined the laws of maritime commerce between neutrals and belligerents (*De Dominio Maris*, 1702), gave an outline of ambassadorial rights and privileges (*De Foro Legatorum*, 1721), besides contributing to a much clearer understanding of the general subject of international law.

Wolff (1679–1754), published in 1749 his "Jus Gentium." This bases international law on a sort of state universal, *civitas maxima*, made up of the states of the world in their collective capacity as voluntarily recognizing a natural law.

Vattel (1714–1767), an ardent admirer of Wolff, published

in 1758 his "Law of Nations," which he based upon the work of Wolff. This work of Vattel was clear and logical and gained an immediate and wide influence, far surpassing that of his master.

Moser (1701–1786), brings into the science the positive method which Rachel had hinted at in his work a hundred years before. He narrows his view to the principles underlying the cases of his own day, and would build the science on recent precedents. The method thus introduced has strongly influenced succeeding writers.

G. F. de Martens (1756–1801), combines in a measure the method of Vattel with the positive method of Moser in his "Précis du Droit des Gens Moderne de l'Europe," 1789. This treatise has been a recognized authority.

Many special and general works appeared in the later years of the eighteenth century and early years of the nineteenth.

Wheaton (1785–1848), the foremost American writer on international law, published in 1836 his "Elements of International Law," which in many editions has long been recognized as a standard throughout the world.

Many other works of highest merit appeared during the latter half of the nineteenth and early twentieth century, such as those of Bluntschli, Travers Twiss, Calvo, Wharton, Phillimore, Pradier-Fodéré, F. de Martens, Bonfils, W. E. Hall, Westlake, and Oppenheim. There are also many living writers whose contributions are of greatest worth. Mention of the leading authors and their works is made in the "Bibliography."

OUTLINE OF CHAPTER IV

SOURCES OF INTERNATIONAL LAW

15. PRACTICE AND USAGE.

16. DECISIONS AND PRECEDENTS.
    - (*a*) Prize and admiralty courts decisions.
    - (*b*) Decisions of domestic courts.
    - (*c*) Decisions of courts of arbitration.

17. TREATIES AND STATE PAPERS.
    - (*a*) Laying down new rules or outlining operation of old rules.
    - (*b*) Enunciation of established rules.
    - (*c*) Agreement as to rules to be held mutually binding.
    - (*d*) Interstate compacts.

18. TEXT WRITERS.

19. DIPLOMATIC PAPERS.

CHAPTER IV

SOURCES OF INTERNATIONAL LAW

15. Practice and Usage

If for a time international intercourse follows certain methods, these methods are regarded as binding in later intercourse, and departure from this procedure is held a violation of international right. That collection of customs known as "The Law Merchant" is an example of a source of this class. Of this it has been said: "Gradually, the usages of merchants hardened into a cosmopolitan law, often at positive variance with the principles of local law, but none the less acquiesced in for mercantile transactions, and enforced by tribunals of commanding eminence and world-wide reputation, such as the courts of the Hanseatic League and the *Parloir aux Bourgeois* at Paris." [1]

Sir W. Scott, in the case of the *Santa Cruz*, 1798, said "Courts of Admiralty have a law and a usage on which they proceed, from habit and ancient practice." [2]

16. Decisions and Precedents

The domestic courts of those states within the family of nations may by their decisions furnish precedents which become the basis of international practice.

(*a*) The decisions of prize and admiralty courts form in them-

[1] Jenks, "Law and Politics in the Middle Ages," p. 30.
[2] The *Santa Cruz*, 1 C. Rob., 49, 61.

selves a large body of law. Jurisdiction in admiralty and maritime causes in the United States rests in the District Courts, with right of appeal in prize cases to the Supreme Court.[1] The District Courts have original jurisdiction in civil causes of admiralty. The prize courts of other powers vary in jurisdiction, nature, and procedure. British and American courts rely more particularly upon precedents, while the Continental courts follow more distinctly the general principles laid down in codes and text writers, and place less reliance upon previous interpretation of these principles as shown in court decisions.[2] Whatever the method of the prize court, its decision, if legally rendered, stands as valid in all states.[3]

Prize and admiralty courts decisions.

Proposals were made at the Second Hague Conference in 1907 for the establishment of an international prize court.

(*b*) The decisions of domestic courts upon such matters as extradition,[4] diplomatic privileges, piracy, etc., tend to become a source of international law. In the United States the Supreme Court has original jurisdiction "in all cases affecting ambassadors, other public ministers, and consuls." [5]

Decisions of domestic courts.

(*c*) The decisions of courts of arbitration and other mixed courts are usually upon broad principles. Some of the principles involved may become established precedents, yet the tendency to render an award, which by a compromise may be measurably acceptable to both parties, may lessen the value of the decision as a precedent. As arbitration has hitherto been voluntary, there has generally been a consensus upon points which might become recognized precedents, even though the decision ren-

Decisions of courts of arbitration.

[1] Act of Congress, March 3, 1911. 2 U. S. Comp. Sts. § 1215.

[2] Lawrence, § 53. [3] Bolton *v.* Gladstone, 5 East, 155, 160.

[4] United States *v.* Rauscher, 1886, 119 U. S. 407.

[5] United States Constitution, Art. III, § 2. For English view, see Walker, p. 46, who quotes 3 Burr, 1804.

dered might not become a precedent. The principles upon which the court of arbitration bases its decision, more often than the decision itself, furnishes material valuable for international law. The resort to arbitration and international courts for adjudication of disputes is an indication of the general recognition of mutual confidence between states.

17. Treaties and State Papers

Treaties and state papers of whatever form[1] indicate the state of opinion, at a given time, in regard to the matters of which they treat. Since they are binding upon the parties to them, treaties may be regarded as evidence of what the states, bound by their terms, accept as law. When the same terms are generally accepted among nations, treaties become a valuable evidence as to practice and are regarded as proper sources of international law, or principles may be so well established by successive treaties as to need no further treaty specification. Treaties and state papers, however, vary greatly in value as sources of international law.

(*a*) Treaties and state papers may lay down new rules or outline the operation of old rules. As instances of those laying down new rules may be taken several of the Hague Conventions of 1907, the International Radiotelegraphic Convention of November 3, 1906, the Geneva Convention of 1864; of those outlining and determining the operation of old rules, there are many instances; the most numerous of these are in the treaties in regard to maritime affairs and consuls.

Laying down new rules or outlining operation of old rules.

(*b*) Treaties and state papers may enunciate established rules as understood by the parties to the treaty. The Declaration of the Conference of London, January 17, 1871, to which the major European states were parties, announces

[1] Declarations, protocols, conventions, proclamations, notes, etc.

that the signatory powers "recognize that it is an essential principle of the Law of Nations that no Power can liberate itself from the engagements of a Treaty, nor modify the stipulations thereof, unless with the consent of the Contracting Powers by means of an amicable agreement." [1]

Enunciation of established rules.

(*c*) Treaties and state papers may agree as to rules which shall be held as binding upon the parties to the treaty or paper. The Declaration of Paris, 1856,[2] agreed as to certain principles and rules of maritime international law, which should be held as binding the signatory powers or those later agreeing to its provisions. This Declaration may be held as generally binding. The United States, by Proclamation of April 26, 1898, announced its adherence to the principles of the Declaration, and during the same year Spain acquiesced in its principles. It was not strictly observed in the World War.

Agreement as to rules to be held mutually binding.

(*d*) Most treaties and state papers, however, deal with matters of interstate politics, and are not in any sense sources of international law. They are in most cases little more than interstate compacts.

Interstate compacts.

18. Text Writers

During the seventeenth and the first half of the eighteenth century, the writings of the great publicists were regarded as the highest source of authority upon matters now in the domain of international law. These writings not only laid down the principles which should govern cases similar to those which had arisen, but from the broad basis given the law of nations deduced the principles for such cases as might arise. This latter method was especially common among the early writers, such as Victoria and Suarez in the sixteenth century.

[1] III Hertslet, 1904.

[2] Appendix p. xxxi.

The philosophical school, from Grotius to the middle of the eighteenth century, continued to propound the principles which should govern in supposed cases, should they ever actually arise. Statesmen looked to these treatises as authoritative sources. The prolific Moser, in the middle of the eighteenth century, made the historical method more prominent by giving less attention to the natural law and by founding his system on usage and treaties. Bynkershoek (1673-1743) had anticipated him in this method in treatment of special topics, but Moser extended the system and made it more general. Succeeding writers mingled the two systems, inclining to the one or to the other. In the early days of the modern period the writers upon the law of nations outlined the course which states should pursue in their relations to one another. In the later days of the modern period, the writers upon the law of nations, while sometimes discussing problems before they arise, in general attempt to expound the rules and principles which have entered already into interstate action. The works of the text writers, from Grotius to the present, must be regarded as sources of highest value.

The Supreme Court of the United States in case of the *Paquete Habana* in 1900 referring to the determination of questions involving international law, said: "For this purpose, where there is no treaty, and no controlling executive or legislative act or judicial decision, resort must be had to the customs and usages of civilized nations; and, as evidence of these, to the works of jurists and commentators, who by years of labor, research, and experience, have made themselves peculiarly well acquainted with the subjects of which they treat. Such works are resorted to by judicial tribunals, not for the speculations of their authors concerning what the law ought to be, but for trustworthy evidence of what the law really is."[1]

[1] The *Paquete Habana* and the *Lola*, 175 U. S., 677.

19. Diplomatic Papers

Diplomatic papers, as distinct from state papers to which more than one state becomes a party, are simply papers issued by a state in regard to its international intercourse. The papers are sometimes named state papers or included among the papers to which other states are parties, — in the United States, in the series known as "Diplomatic Correspondence, 1861–1868," and "Foreign Relations" since 1870; and in Great Britain in the "British and Foreign State Papers."

These papers, showing the opinions of various states from time to time upon certain subjects which may not come up for formal state action, afford a valuable source of information upon the attitude of states toward questions still formally unsettled. The simple expression to state agents in the way of instructions or information as to the position of the state on a given matter may, if continued and long accepted, give to the principle involved the force of international sanction. This was almost the case in the so-called Monroe Doctrine.[1] In these papers may often be found an indication of the line which the principles of international law will subsequently follow, and a general consensus by several states in diplomatic instructions may be considered strong evidence of what the law is on a given point.

[1] In signing the Hague Convention for the Pacific Settlement of International Disputes, the representatives of the United States made the reservation that, "Nothing contained in this convention shall be so construed as to require the United States of America to depart from its traditional policy of not intruding upon, interfering with, or entangling itself in the political questions of policy or internal administration of any foreign state; nor shall anything contained in the said convention be construed to imply a relinquishment by the United States of America of its traditional attitude toward purely American questions."

PART TWO

PERSONS IN INTERNATIONAL LAW

OUTLINE OF CHAPTER V

STATES

20. DEFINITION OF A STATE.
    - (*a*) Must be political unity.
    - (*b*) Must possess sovereignty.

21. CONDITIONS OF STATE EXISTENCE
    - (*a*) Moral.
    - (*b*) Physical.
    - (*c*) Communal.
    - (*d*) External relationship.

22. RECOGNITION OF NEW STATES.
    - (*a*) De facto existence of a state.
    - (*b*) Varying circumstances of recognition.
        - (1) By division.
        - (2) By union.
        - (3) By admission of old states.
        - (4) By admission of former barbarous communities.
        - (5) Individual and collective recognition.
        - (6) Example of an act of dissolution.
    - (*c*) Acts constituting recognition.
    - (*d*) Premature recognition.
    - (*e*) Certain political conditions requisite for recognition.
    - (*f*) Recognition irrevocable.
    - (*g*) Consequences of recognition.
        - (1) For the recognizing state.
        - (2) For the recognized state.
        - (3) For the parent state.
        - (4) For other states.

CHAPTER V

STATES

20. Definition of a State

A STATE is a sovereign political unity. It is of the relations of states that public international law mainly treats. From the nature of its subject-matter it is a juridical, historical, and philosophical science.[1] These sovereign political unities may vary greatly. The unity, however,

Must be political and sovereign.

(*a*) Must be *political, i.e.*, organized for public ends as understood in the family of nations and not organized for private ends as in the case of a commercial company, a band of pirates, or a religious organization.

(*b*) Must possess *sovereignty, i.e.*, supreme political power beyond and above which there is no political power. It is not inconsistent with sovereignty, that a state should voluntarily take upon itself obligations to other states, even though the obligations be assumed under stress of war or fear of evil.

21. Conditions of State Existence

From the nature of the state as a sovereign political unity it must be self-sufficient, and certain conditions are therefore generally recognized as necessary for its existence from the standpoint of international law.[2]

[1] Holtzendorff, "Introduction droit public," 44.
[2] Hall, p. 18; 1 Rivier, § 3, 9, I.

(*a*) A state must be to a degree *moral*. In order that a state may be regarded as within the "family of nations," and within the pale of international law, it must recognize the rights of other states and acquiesce in its obligations toward them. This is considered a moral condition of state existence.

Essential conditions: moral, physical, communal.

(*b*) A state must also possess those *physical* resources which enable it to exist, as territory, etc.

(*c*) A state must possess a body of men in such *communal* relationship as to warrant the belief in the continued existence of the unity. Each state may be its own judge as to the time when this relationship is established in a given body of men, and when the recognition of the new state is fitting.

That such conditions are recognized as prerequisites of state existence from the point of view of international law is not due to the essential nature of the state, but rather to the course of development of international law; as Hall says: "the degree to which the doctrines of international law are based upon the possession of land must in the main be attributed to the association of rights of sovereignty or supreme control over human beings with that of territorial property in the minds of jurists at the period when the foundations of international law were being laid." [1]

(*d*) The external relationship of the state rather than the internal nature is the subject of consideration in international law. For local law, a community may enter upon state existence long before this existence is recognized by other nations, as in the case of Switzerland before 1648. Until recognition by other states of its existence becomes general, a new state cannot acquire full status in international law; and this recognition is conditioned by the policy of the recognizing states.

External relationship.

[1] Hall, p. 19.

22. Recognition of New States

(*a*) State existence *de facto* is not a question of international law but depends upon the existence of a sovereign political unity with the attributes which necessarily appertain to it. This *de facto* existence is not dependent upon the will of any other state or states.[1]

De facto existence of a state.

The entrance of the state into the international statehood, however, depends entirely upon the recognition by those states already within this circle. Whatever advantages membership in this circle may confer, and whatever duties it may impose, do not fall upon the new state until its existence is generally recognized by the states already within the international circle. These advantages and duties, as between the recognizing and recognized state, immediately follow recognition but do not necessarily extend to other states than those actually parties to the recognition. The basis of this family of nations or international circle which admits other states to membership is historical, resting on the polity of the older European states. These states, through the relations into which they were brought by reason of proximity and intercourse, developed among themselves a system of action in their mutual dealings; and international law in its beginning proposed to set forth what this sys-

[1] The internal acts of a *de facto* state are valid, whatever the attitude of the international circle. As an example, in 1777, during the Revolutionary War, the British governor of Florida made a grant of land in what is now the southern part of the United States. Fifty years later a descendant of the grantee laid claim to the land, but the Supreme Court of the United States declared: "It has never been admitted by the United States that they acquired anything by way of cession from Great Britain by that treaty [of Peace, 1783]. It has been viewed only as a recognition of preëxisting rights, and on that principle the soil and the sovereignty, within their acknowledged limits, were as much theirs at the Declaration of Independence as at this hour. By reference to the treaty, it will be found that it amounts to a simple recognition of the independence and limits of the United States, without any language purporting a cession or relinquishment of right, on the part of Great Britain; . . . grants of soil made *flagrante bello* by the party that fails, can only derive validity from treaty stipulations." Harcourt *v.* Gaillard, 12 Wheat. 523, 527. See also M'Ilvaine *v.* Coxe's Lessee, 4 Cr. 209, 212.

tem was and should be.[1] This family of states could not permit new accessions to its membership unless these new states were properly constituted to assume the mutual relationships, and as to the proper qualifications for admission in each case, the states already within the family claim and exercise the right to judge.

(*b*) The circumstances of recognition vary.

(1) The most numerous instances are in consequence of *division*, which involves the recognition of the existence of more than one state within the limits which had formerly been under a single jurisdiction. This may be preceded by recognition of the belligerency of a revolted community within the jurisdiction of an existing state, or may be preceded by division of an existing state into two or more states.[2] In the first case recognition is a question of national policy; in the second case recognition is usually readily accorded.

Varying circumstances of recognition.

(2) In modern times a new state has frequently been formed by the *union* of two or more existing states.[3] The recognition in such a case usually follows immediately.

(3) A state *after existence for a period of years* may be formally admitted into the family of states. Japan, for centuries a *de facto* state, was only recently fully admitted to international statehood.[4] Turkey, so long the dread of Europe, was formally received by the Treaty of Paris, 1856.

(4) New states may be formed in *territory hitherto outside* any *de facto* state jurisdiction, or within regions *hitherto considered savage*. The examples of this class are mainly African, as in the creation of the Kongo Free State under the International Asso-

[1] Suarez, "De Legibus," 6.

[2] Wheat. D., 41 n.

[3] Greater Republic of Central America, June 20, 1895, from Republics of Nicaragua, Salvador, and Honduras. Dissolved November 20, 1898.

[4] Japan has been generally recognized since 1894, and her foreign relations were for several years in course of readjustment. This readjustment was completed as regards the United States by the treaty of November 22, 1894, which became fully operative July 17, 1899.

ciation of the Kongo.[1] The United States recognized the Kongo Free State by acknowledging its flag, April 22, 1884. Liberia, originally established by the American Colonization Society in 1821 as a refuge for negroes from America, since 1847 has been recognized as an independent republic.

(5) From another point of view *recognition may be individual or collective.* Recognition is individual when a state, independently of any other, acknowledges the international statehood of a new state. This was the method by which other states recognized the United States. Collective recognition is by the concerted action of several states at the same time. This has taken place most often in the admission of minor states to the European family of states, as in the cases of Greece by the powers at the Conference of London, 1830; Belgium, 1831; Montenegro, Servia, and Roumania, at the Congress of Berlin, 1878; Bulgaria by agreement of the interested Powers in 1908; the Czecho-Slovak State and Poland at Versailles in 1919.

Example of an act of dissolution.

(6) As an example of an act of dissolution may be cited King Oscar's address to the Swedish Riksdag, October 18, 1905, following a Norwegian vote for dissolution:

"Good gentlemen, and Swedish men: It is an important moment when I now raise my voice in this throne room.

"The union formed in 1814 between the two peoples of the Scandinavian peninsula, which during former centuries were separate nations, is now dissolved and the Swedish Riksdag, by its decision of the 16th instant, has confirmed my proposition in favor of its dissolution." [2]

(*c*) The act constituting recognition of a new state may be formal, as by a declaration, proclamation, treaty, sending and receiving ambassadors, salute of flag, etc., or informal,

[1] The Kongo Free State by Treaty of Cession and Annexation, November 28, 1907, was annexed to Belgium under the title, "Belgian Kongo."

[2] U. S. For. Rel. 1905, p. 863.

by implication through the grant of an *exequatur* to a consul from the new state, or other act which indicates an acknowledgment of international rights and obligations.[1] It should be observed, however, that the appointment by or reception within, an existing state, of agents to carry on necessary intercourse between the existing state and the aspirant for recognition does not constitute recognition. It may be essential to have relations with a community the statehood of which is not established, because of commercial and other matters pertaining to the rights of the citizens of the existing state whose interests, or who in person, may be within the jurisdiction of the unrecognized community.[2] The definite act of recognition is, however, in accord with the decision of the internal authority to which this function is by state law ascribed. As foreign states usually take cognizance of the acts of the executive department only, it is the common custom to consider recognition as an executive function, or as a function residing in the head of the state. In the United States, the President is for foreign affairs the head of the state, and has the authority to recognize new states in any manner other than by those acts which by the Constitution require the advice and consent of the Senate, as in the conclusion of treaties, and appointment of ambassadors, other public ministers, and consuls.[3] President Roosevelt in 1903, receiving the Minister of Panama, said: "It is . . . fitting that the United States should . . . be the first to stretch out the hand of fellowship and to observe toward the newborn State the rules of equal intercourse that regulate the relations of sovereignties toward one another." [4] As President Jackson had in his message in December, 1831, and in the official correspondence with Buenos Aires denied that country's jurisdiction over the Falkland Islands, Justice McLean said, in rendering his opinion

Acts constituting recognition.

[1] 1 Moore, § 27. [2] 1 Rivier, §§ 44, 125. [3] 1 Halleck, p. 90.
[4] U. S. For. Rel. 1903, p. 246. See on this subject, 1 Moore, § 27.

in Williams *v.* Suffolk Insurance Company: "And can there be any doubt that when the executive branch of the government which is charged with our foreign relations, shall, in its correspondence with foreign nations, assume a fact in regard to sovereignty of any island or country, it is conclusive on the judicial department? And in this view it is not material to inquire, nor is it the province of the court to determine, whether the executive be right or wrong. It is enough to know that in the exercise of his constitutional functions he has decided the question." [1] "The President is the executive department." [2]

(*d*) Recognition may be premature and the recognized community may not be able to maintain its place in the international circle, or in case of a struggle with another state may be defeated. The recognizing state must assume in such case whatever consequences may come from its misjudgment, and the parent state may justly question the right of the recognizing state in its action, *e.g.* the recognition by France of the United States in 1778 could justly be regarded by England as premature and as a hostile act.

Premature recognition.

(*e*) The recognition of a new state is the recognition of the existence of certain political conditions. This recognition of the state carries with it the acknowledgment of sovereignty, independence, equality, etc. It is an essential condition to just recognition that the new aspirant possess these qualifications absolutely or potentially to a reasonable extent.

Certain political conditions requisite for recognition.

(*f*) From its nature, recognition is irrevocable and absolute, unless distinctly conditional. Even when conditional, if the recognition is prior to the fulfillment of the condition by the recognized state, the recognition cannot be withdrawn because

[1] 13 Pet. 415. See also Jones *v.* United States, 137 U. S. 202; Foster *v.* Neilson, 2 Pet. 253.

[2] State of Mississippi *v.* Johnson, President, 4 Wall. 475, 500. For review of the question, see 32 Amer. Law Rev. 390, W. L. Penfield.

of non-fulfillment of the condition, but the recognizing state may resort to any other means which would be admitted in international law as justifiable against any other state failing to fulfill its obligations, *e.g.* suspension of diplomatic relations, retorsion, reprisals, or even war.[1] In the case of Belgium, the definition of its boundaries and establishing of permanent neutralization was an act subsequent to the recognition of its international statehood, and in case of violation of the treaty stipulations, Belgium would not lose its position as a state, but would be liable to such measures of reparation as the other parties to the treaty might employ.[2] If recognition could be withdrawn, it would work injustice to the recognized state, and to other states who, as third parties, will not permit their rights to be subject to the will of the recognizing state or states.

Recognition irrevocable.

(*g*) The consequences of recognition immediately touch the relations of (1) the recognizing state, (2) the recognized, (3) the parent state if the new state is formed from an existing state, and (4) in a minor degree other states.

Consequences of recognition.

(1) The *recognizing state* is bound to treat the new state in all respects as entitled to the rights and as under duties accepted in international law.

(2) The *recognized state* is, as related to the recognizing state, entitled to the rights, and under the obligations prescribed in international law. As it is a new person in international law, it is entitled to full personal freedom in entering into relations with other states.[3] So far, however, as the territory within the new state was under local obligations, these obligations are transferred to the new state. The general obligations

[1] 1 Rivier, "Droit des gens," §§ 3, 11.

[2] Hall, note 1, p. 86.

[3] Official United States Bulletin, No. 441, p. 2. Independence of Czecho-Slovaks and Jugo-Slavs, Oct. 18, 1918.

resting on the parent state, by reason of treaties and responsibilities of all kinds which have been assumed by the parent state in the capacity of a legal unity, are not transferred, because the identity of the parent state remains intact.[1]

(3) The *parent state*, in cases in which the new state is formed by separation from one already existing, is, as regards the recognizing state, on the same international footing as the new state. Both states are entitled to equal privileges, and under like obligations. The relations to other states are not necessarily much changed.

(4) The *relations* of the *states other than the recognizing, recognized*, and *parent states* are changed to the extent that they must respect the *de facto* relations set forth in (1), (2), and (3) above, *i.e.* while not recognizing the new state, they must accept the fact that the recognition exists for the states who are parties to it, and they are not entitled to pass judgment as to the justice of the recognition.

[1] Hall, p. 91.

OUTLINE OF CHAPTER VI

LEGAL PERSONS HAVING QUALIFIED STATUS

23. MEMBERS OF CONFEDERATIONS AND OTHER UNIONS.
    (*a*) States as members of confederations.
    (*b*) States as members of unions.

24. NEUTRALIZED STATES: Sovereign only in a qualified degree.

25. PROTECTORATES AND SUZERAINTIES; MANDATES.
    (*a*) Protectorates usually possess all powers not specifically resigned.
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26. CORPORATIONS.
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27. INDIVIDUALS.

28. INSURGENTS.
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        (1) Recognition by a foreign state.
        (2) Recognition by the parent state.
        (3) General effect of recognition.
    (*f*) Admission of insurgency or recognition of belligerency gives certain war status.

30. COMMUNITIES NOT FULLY CIVILIZED.

CHAPTER VI

LEGAL PERSONS HAVING QUALIFIED STATUS

23. Members of Confederations and Other Unions

States as members of confederations.

A STATE in the sense of public law is not necessarily a state in the full sense of international law if there are any limitations upon its power to enter into relations with other states. Such a state may be a member of a confederation and exercise certain powers giving it a qualified international status. These loose unions may, as in the German Confederation from 1815 to 1866, leave to the local states a degree of autonomy in regulating international affairs while granting to the central government certain specified powers. This division of international competence is usually a temporary compromise ending in new states [1] or in a close union.

In the examples of personal and real unions and the like, the nature of the state is a matter of public law and little concerns international law. As related to international law, the question is how far are such states restricted in their dealings

[1] The Secretary of State of the United States, replying to the Japanese Minister in 1905 on the dissolution of the United Kingdom of Sweden and Norway, said: "This Government has been notified by the Government of Norway that the functions of the diplomatic representatives of Sweden and Norway have ceased, *ipso facto*, so far as Norway is concerned, and that representatives of Norway will be appointed. It is understood that the Swedish Government regards its diplomatic agents as the representatives of the sovereign, and that with the termination of the King's sovereignty over Norway his ministers cease to represent Norway; but that their representation of Sweden is unaffected thereby and that no new credentials are needed. It is presumed that each country holds the same position with regard to its consular representatives." U. S. Foreign Relations, 1905, p. 868.

with other states. Before the 20th century, a union, such as that existing in the case of the ruler of the United Kingdom of Great Britain and Ireland and Empire of India, was of importance to international law only in its united capacity, while for public law the nature of the union was of much significance. The same may be said of the union of Austria-Hungary from 1867 till 1918, and of the union of Sweden-Norway from 1814 until 1905. In recent years, parts of the British Empire have had autonomy in certain international matters and have voted in their own right in certain conferences. By Article I of the Agreement of December 6, 1921, "Ireland shall have the same constitutional status in the community of nations known as the British Empire as the Dominion of Canada," etc.

States as members of unions.

24. Neutralized States

Neutralized states are sovereign only in a qualified degree. While such states have a certain formal equality, their actual competence is limited in regard to the exercise of sovereign powers. This limitation as to neutrality may be externally imposed or externally enforced, as in the case of Belgium, 1839–1919, Switzerland from 1815, Luxemburg, 1842–1919, Kongo, 1885–1908, and, till 1900, Samoa. This neutralization may take place for political or philanthropic reasons. The degree of external sovereignty possessed by neutralized states varied. The fact that these states were not fully sovereign in the field of international law in no way affected their competence except in respect to matters covered by the conditions of neutralization. Such states were deprived of the right of offensive warfare, and had not therefore that final recourse possessed by fully sovereign states for enforcing their demands. The tendency in recent years has been away from the status of neutralization.

25. Protectorates, Suzerainties, Mandates

(*a*) States under protectors — *protectorates* — usually possess all powers not specifically resigned. States fully sovereign may demand (1) that states under protectors afford reasonable protection to the subjects and to the property of subjects of fully sovereign states, and (2) that the protecting state use reasonable measures to give effect to the protection which it has assumed. Just how much responsibility the protecting state has depends upon the degree of protection exercised and assumed. The protectorate of Great Britain over the South African Republic by the agreement of 1884, terminated in 1902 by war and absorption, was of a very moderate form. The right to veto within a certain time any treaty made with a foreign state, other than the Orange Free State and native princes, constituted practically the only restriction on the independence of the Republic. Great Britain declared a protectorate over Egypt in 1914, but recognized Egypt as a state in 1922. In many instances protectorates easily pass into colonies, as in the case of Madagascar, which Great Britain recognized as under French protection in 1890, which protection the queen of Madagascar accepted in October, 1895, and in August, 1896, Madagascar was declared a French colony.

Protectorates usually possess all powers not specifically resigned.

In the Convention between the United States and the Republic of Panama, November 18, 1903, Article I, "The United States guarantees and will maintain the independence of the Republic of Panama."

A relationship partaking somewhat of the nature of a protectorate was entered into by Germany, France, Great Britain, Norway, and Russia in 1907, by which Norway "undertakes not to cede any portion of her territory to any power," and the other states undertake "to respect the integrity of Norway" and in case of demand from Norway to afford "their

support, by such means as may be deemed the most appropriate, with a view to safeguarding the integrity of Norway." [1]

(*b*) As distinct from a state under a protectorate which possesses all competence in international affairs which it has not specifically resigned, a state under *suzerainty* possesses only such competence as has been specifically conferred upon it by the suzerain. The relations are usually much closer than between protecting and protected states; and in many cases only the suzerain has international status, while the vassal is merely tributary, though having a certain degree of internal independence which may be in some instances almost complete. By the first article of the Treaty of Berlin, Bulgaria was made a tributary and autonomous principality under the suzerainty of the Sultan of Turkey. Under Russian suzerainty were such vassal states as Bokhara and Khiva. Some of the states under the suzerainty of European states had no status in international law, as in the case of Bokhara and Khiva. Such anomalous cases as the co-suzerainty of the republic of Andorra, the collective suzerainty of the Samoan Islands till 1900, and the absolute suzerainty of the United States over the "domestic dependent nations" of Indians show variations in relations of dependent entities.

Suzerainties possess only the competence specifically granted.

(*c*) Mandates established in accordance with Article 22 of the League of Nations Covenant are colonies and territories which as a consequence of the World War passed from the sovereignty of certain states and became a "trust of civilization." Over these tutelage was to be exercised by certain states as mandatories on behalf of the League. The mandatory is to make an annual report to the League Council "in reference to the territory committed to its charge." A commission is constituted "to receive and examine the annual reports."

Mandates.

[1] 2 A. J. I. L. Doc., p. 267.

26. Corporations

From the point of view of international law, corporations are generally of two kinds: corporations organized for private purposes, and corporations organized for purposes involving the exercise of delegated sovereign powers.

Corporations organized for private purposes.

(*a*) Corporations organized for private purposes come within the field of international law, when in time of war their property or other rights are impaired, when maritime law, whether of peace or war, may have been infringed, and when their rights are involved in the domain of private international law.

Corporations exercising political powers.

(*b*) Corporations organized for purposes involving the exercise of political powers have from time to time, for several centuries, been chartered and have often acquired a quasi-international status. While restricted to the performance of functions intrusted to them by their charters, the home governments have often sanctioned acts for which their charters gave no warrant. The companies that early entered America, India, Africa, and the later African companies, are of this kind. The development of the doctrine of "the sphere of influence" gave an important position to the companies organized within those states desirous to share in "the partition of Africa."

English East India Company.

Among the most notable of the earlier companies was the English East India Company, which received its first charter in 1600. During more than two hundred and fifty years this company exercised practically sovereign powers, until by the act of August 2, 1858, the government heretofore exercised by the company was transferred to the crown, and was henceforth to be exercised in its name.

In the late nineteenth century, African companies chartered by the European states seeking African dominions had very elastic charters in which the home governments generally re-

served the right to regulate the exercise of authority as occasion might demand. These companies advanced and confirmed the spheres of influence of the various states, governed under slight restrictions great territories, and treated with native states with full authority. The British South Africa Company, chartered in 1889, was granted liberal powers of administration and full capacity, subject to the approval of the Secretary of State for the Colonies, to treat with the native states. The field of operations of this company was extended in 1891, so that it soon included over six hundred thousand square miles of territory. The acts of these companies became the basis of subsequent negotiations among the various European states, and the companies had a very important influence in molding the character of African development.

African companies.

In recent years commercial companies have secured special concessions for the construction of railways, opening of mines, etc., in many regions. These companies have often received the approval of their governments and have sometimes had government subsidies. The areas in which these companies operated or in which they had concessions were considered within the *spheres of interest* of their states.

Other companies.

27. Individuals

Without entering into discussion of "the doctrine of the separability of the individual from the state," it is safe to affirm that individuals have a certain degree of competence under exceptional circumstances, and may come under the cognizance of international law. By the well-established dictum of international law a pirate may be captured by any vessel, whatever its nationality. General admiralty and maritime procedure against a person admit the legal status of an individual from the point of view of international law. The

extension of trade and commerce has made this necessary. This is particularly true in time of war, when individuals wholly without state authorization, or even in contravention of state regulations, commit acts putting them within the jurisdiction held to be covered by international law, as in the case of persons brought before prize courts. The principles of private international law cover a wide range of cases directly touching individuals.

28. Insurgents

Definition.

(*a*) Insurgents are organized bodies of men who, for public political purposes, are in a state of armed hostility to the established government. There may be war in the "material sense" which, because belligerency has not been recognized, has not become war in the "legal sense";[1] nevertheless those engaged may have legal status.

Effect of admission of insurgency.

(*b*) The practice of tacitly admitting insurgent rights has become common when the hostilities have assumed such proportions as to jeopardize the sovereignty of the parent state over the rebelling community, or seriously to interfere with customary foreign intercourse.[2]

In general, it may be said that:[3]

(1) Insurgent rights cannot be claimed by those bodies seeking other than political ends.[4]

[1] "The distinction between recognition of belligerency and recognition of a condition of political revolt, between recognition of the existence of war in a material sense and war in a legal sense, is sharply illustrated by the case before us. For here the political department has not recognized the existence of a *de facto* belligerent power engaged in hostility with Spain, but has recognized the existence of insurrectionary warfare prevailing before, at the time, and since this forfeiture is alleged to have been incurred." *The Three Friends*, 166 U. S. 1.

[2] Wheat. D., note 15, p. 34.

[3] For full discussion see Wilson, "Insurgency" lectures, U. S. Naval War College, 1900.

[4] Wilson, Insurgency and International Maritime Law, 1 A. J. I. L., p. 46. Underhill *v.* Hernandez, 168 U. S. 250.

(2) Insurgent acts are not piratical, as they imply the pursuit of "public as contrasted with private ends." [1]

(3) The admission of insurgent rights does not carry the rights of a belligerent, nor imply official recognition of the political status of the insurgent body. [2]

(4) The admission of insurgent rights does not change the responsibility of the parent state for acts committed within its jurisdiction.[3]

(5) When insurgents act in a hostile manner toward foreign states, they may be turned over to the parent state, or may be punished by the foreign state.[4]

(6) A foreign state must in general refrain from interference in the hostilities between parent state and insurgents, *i.e.* cannot extend hospitality of its ports to insurgents, extradite insurgents, etc., though it may intern them.[5]

(7) When insurgency exists, the armed forces of the insurgents must observe and are entitled to the advantages of the laws of war in their relations to the parent state.[6]

(*c*) During the struggles between the parties in the United States of Colombia in 1885, the President of Colombia decreed:

(1) That certain ports held by the insurgents were closed to foreign commerce under penalties prescribed by Colombian laws, and (2) that insurgent vessels flying the Colombian flag were beyond the pale of international law.[7]

The United States refused to recognize the validity of the

[1] 2 Moore, §§ 329–335; United States *v. Ambrose Light*, 25 Fed. Rep. 408. Snow cases, 206, *Montezuma*. *The Itata*, 56 Fed. Rep. 505. See the *Virginius*, U. S. For. Rel. 1875, vol. II. p. 1178.

[2] President Cleveland's Message Dec. 8, 1885. 8 Richardson Messages and Papers of the Presidents, pp. 324, 326. U. S. For. Rel. 1885, pp. 254, 273.

[3] Parl. Papers, 1887, 1 Peru, 18. China in 1901 agreed to pay various states more than $335,000,000 as indemnity for the injuries suffered during the Boxer uprising of the previous year (U. S. For. Rel. 1901, Appendix). See also Spanish Treaty Claims Commission, Opinion No. 8 (1903).

[4] 2 Moore, § 331, *Huascar*.

[5] Ex Parte Toscano, 208 Fed. Rep. 938.

[6] Lawrence, § 142.

[7] 1885, For. Rel. U. S. 252, 264.

decree.[1] President Cleveland's message of December 8, 1885, stated: "The denial by this (U. S.) Government of the Columbian proposition did not, however, imply the admission of a belligerent status on the part of the insurgents."

Practice of the United States

During the rebellions in Chile in 1891 and in Brazil in 1894, the insurgents, while not recognized as belligerents by foreign powers, were nevertheless given freedom of action by these powers.

The President's messages of December 2, 1895, December 7, 1896, and December 6, 1897, distinctly mention a status of insurgency as existing in Cuba.

In 1913 and later insurgent troops from Mexico crossing into the United States were interned in accordance with the Hague Convention.

By a joint resolution of the Congress of the United States approved March 14, 1912, it was provided:

"That whenever the President shall find that in any American country conditions of domestic violence exist which are promoted by the use of arms or munitions of war procured from the United States, and shall make proclamation thereof, it shall be unlawful to export except under such limitations and exceptions as the President shall prescribe any arms or munitions of war from any place in the United States to such country until otherwise ordered by the President or by Congress."

Congress on January 31, 1922, passed a joint resolution similar to that of March 14, 1912, but applying to states where the United States exercises extraterritorial jurisdiction, and under this resolution President Harding on March 6, 1922, owing to disturbed conditions prevailing there, prohibited export of arms to China.

[1] *Ibid.*, pp. 254 *et seq.*; 2 Moore, § 332; see also Parl. Deb. H. C., June 27, 1861; Bluntschli, § 512; Hall, p. 39.

29. Belligerents

(*a*) A community attempting by armed hostility to free itself from the jurisdiction of the parent state may, under certain conditions, be recognized as a belligerent.

(*b*) The general conditions prior to recognition are: (1) That the end which the community in revolt seeks shall be political, *i.e.* a mere mob or a party of marauders could have no belligerent rights; (2) the hostilities must be of the character of war and must be carried on in accord with the laws of war; (3) the proportions of the revolt must be such as to render the issue uncertain and to make its continuance for a considerable time possible; (4) the hostilities and general government of the revolting community must be in the hands of a responsible organization.

Conditions prior to recognition.

As each state, including the parent state, must judge as to the fact whether the conditions warranting recognition of belligerency exist, there may be great divergency of opinion in cases of recognition,[1] but the question of belligerency is a question of fact and never a question of theory.

(*c*) A community carrying on, in accord with the rules of war, an armed revolt of such proportions as to make the issue uncertain and acting under a responsible organization may not, without offense to the parent state be recognized as a belligerent except upon good grounds. The generally admitted ground is, that the interests of the recognizing state be so far affected by the hostilities "as to make recognition a reasonable measure of self-protection."[2] "The reason which requires and can alone justify this step (recognition of belligerency) by the government of another country, is, that its own rights and interests are so far affected as to require a

Grounds of recognition.

[1] See numerous references in 51 Br. and Fr. St. Papers; also Hall, p. 33.
[2] Hall, p. 32.

definition of its own relations to the parties. . . . A recognition by a foreign state of full belligerent rights, if not justified by necessity, is a gratuitous demonstration of moral support to the rebellion, and of censure upon the parent government." [1]

(*d*) Recognition of belligerency is naturally an act of the executive authority.[2]

The following is the proclamation of Queen Victoria of May 11, 1863: —

"Whereas we are happily at peace with all sovereign powers and states:

"And whereas hostilities have unhappily commenced between the Government of the United States of America and certain states styling themselves the Confederate States of America:

Recognition of belligerency an act of the executive authority.

"And whereas we, being at peace with the Government of the United States, have declared our royal determination to maintain a strict and impartial neutrality in the contest between the said contending parties:

"We, therefore, have thought fit, by [and with] the advice of our privy council, to issue this our royal proclamation:

"And we do hereby strictly charge and command all our loving subjects to observe a strict neutrality in and during the aforesaid hostilities, and to abstain from violating or contravening either the laws and statutes of the realm in this behalf or the law of nations in relations thereto, as they will answer to the contrary at their peril."

(*e*) Certain consequences follow the recognition of belligerency.

(1) *If recognition is by a foreign state*

From the date of recognition, the parent state is released from responsibility to the recognizing state for the acts of the belligerents.

[1] Wheat. D., note 15, p. 34.

[2] 1 Moore, §§ 59–70.

So far as the recognizing state is concerned, the parent state and the belligerent community would have the same war status, *i.e.* in the ports of the recognizing state, the vessels of both parties would have the same privileges, the merchant vessels of the recognizing state must submit to the right of search as justly belonging to both parties; in fine, so far as the prosecution of hostilities is concerned, the recognizing state must accord the belligerent community all the privileges of a full state.

Consequences of recognition of belligerency.

The recognizing state may hold the belligerent community, if it subsequently becomes a state, accountable for its acts during the period after the recognition of its belligerency. If, however, the parent state reduces the revolting community to submission, the recognizing state can hold no one responsible for the acts committed by the recognized community after the date of recognition.

This recognition does not necessarily affect other than the three parties, the recognizing state, the belligerent community, and the parent state.

(2) *If recognition is by the parent state*

From the date of recognition, the parent state is released from responsibility to all states for the acts of the belligerents.

So far as the prosecution of hostilities is concerned, the community, recognized as belligerent by the parent state, is entitled to full war status.

From the date of recognition by the parent state, the belligerent community only is responsible for acts within its jurisdiction, and if subdued by the parent state, no one can be held responsible, *i.e.* contracts made with a belligerent, or responsibilities assumed by a belligerent, do not fall upon the victorious parent state.

Recognition of belligerency by the parent state gives the revolting community a war status as regards all states.

(3) *General effect of recognition*

General effect of recognition.

In a broad way, recognition by the parent state makes general those conditions which may exist only for the parties directly concerned when recognition is by a single foreign state. In cases where several states recognize the belligerency of a hostile community, other states that have not recognized its belligerency may, without offense to the parent state, treat the hostile community as a lawful belligerent, which treatment would be constructive recognition. The general effect of recognition is to extend to the belligerent all the rights and obligations as to war that a state may possess, and to free the parent state from certain obligations while giving some new rights. The parent state may use the proper means for the enforcement of neutrality, may demand reparation for any breach of the same, may maintain blockade, prize courts, and take other measures allowable in war.

(*f*) Insurgent status is usually tacitly admitted for a period prior to the recognition of belligerency, and the vessels of the insurgents are not regarded as pirates either in practice or theory. They have not the *animus furandi*. The admission of insurgent status or the recognition of belligerency does not imply anything as to the political status of the community. In the first place there is conceded a qualified war status, and in the second full war status.

Admission or recognition of war status.

30. Communities Not Fully Civilized

While there is no agreement as to what constitutes civilization, still international law is considered as fully binding only upon states claiming a high degree of enlightenment. Communities, whether or not politically organized and not within

the circle of states recognized by international law, because they are not regarded as sufficiently civilized, are not treated as without rights. It is held that these communities should be treated as civilized states would be treated, so far as the time and other circumstances permit. Unduly severe measures, whether in war or peace, should not be used by civilized states in dealing with those not civilized. It may be necessary that barbarians should be used as auxiliary forces in contests with barbarians, but it is now held that such forces should be officered and controlled by the civilized state. Extreme measures, in the way of devastation and destruction, have been used with the idea of impressing upon the minds of barbarians respect for the power of a state, but it is now questioned how far this is fitting for states claiming civilization. Many states not admitted to the circle of nations have now acquired such a status as entitles them to the general privileges of international law to the extent to which their action has not violated its provisions, and it is generally so accorded.

PART THREE

INTERNATIONAL LAW OF PEACE

OUTLINE OF CHAPTER VII

GENERAL RIGHTS AND OBLIGATIONS OF STATES

31. **EXISTENCE:** The single comprehensive right of a state.

32. **INDEPENDENCE AND INTERDEPENDENCE:** Relationship in family of nations.

33. **EQUALITY:** The possession of equal rights in political affairs.

34. **JURISDICTION:** The right to exercise state authority.

35. **PROPERTY:** The right of domain in the territory.

36. **INTERCOURSE:** A right necessary for the transaction of state business.

CHAPTER VII

GENERAL RIGHTS AND OBLIGATIONS OF STATES

31. Existence

The most comprehensive right of a state is the *right to exist* as a sovereign political unity. From this comprehensive right flow the general rights of *independence, equality, jurisdiction, property,* and *intercourse* and the obligations which the exercise of these rights imply. There are many classifications of the general rights of states. During the eighteenth century a classification into perfect and imperfect rights was common. A classification based on the essential nature of the state as a sovereign political unity, having (1) a right to existence and (2) from the point of view of international law, having relations to other states, has been widely followed. The rights based on the comprehensive right to existence were variously named as essential, fundamental, primitive, innate, absolute, permanent, etc., while the rights derived from the practice of states in their mutual relations were called accidental, derived, secondary, acquired, relative, contingent, etc. The view now most generally recognized is that from the single comprehensive right of states *to exist,* all other rights flow, and all other rights are therefore related, if not directly, at least by virtue of their common source.

32. Independence and Interdependence

Independence from the point of view of international law is freedom from external political control though not necessarily isolation or non-relationship with other states. While all

states possessing freedom from external political control may not be admitted to the family of states, yet in order that a state may be admitted, it is regarded as essential that it be independent. The recognition of a state carries with it the recognition of independence. However, from the fact that there are states in the world having equal rights to independence, it follows that the field of action of each state is limited by the necessity of respect for the right of independence belonging to other states. The admission of a state to the family of nations in itself creates a relation of interdependence.

The recognition of a state presupposes autonomy as an essential for the existence of a sovereign political unity, and autonomy implies the right to determine and pursue such lines of action as may be in accord with its policy and in accord with international law.

33. Equality

All states, the existence of which has been recognized by the family of states, are regarded as possessed of equal rights so far as legal competence is concerned.[1]

This does not imply an equality of territorial area, population, wealth, rank, votes, and influence, etc., or that a given state may not voluntarily limit the exercise of its powers.

34. Jurisdiction

The right of jurisdiction is the right to exercise state authority. The right of jurisdiction is in general coextensive with the dominion of the state. It may be "laid down as a general proposition that all persons and property within the territorial jurisdiction of a sovereign are amenable to the jurisdiction of himself or his courts: and that the exceptions to this rule are such only as by common usage and public policy have been allowed, in order to preserve the peace and harmony of nations,

[1] "The Equality of States in International Law," Dickinson,

and to regulate their intercourse in a manner best suited to their dignity and rights." [1]

35. Property

In international law, as against other states, a given state has the right of property or domain in the territory and fixtures within its limits. This right of property is not the right in the old feudal sense, for in the public law of the state the title of ownership may vest in the state only in a limited sense as over territory to which none of its subjects have title, and over such other forms it has ownership in corporate capacity, as public buildings, forts, arsenals, vessels, lighthouses, libraries, museums, etc. The right of eminent domain as a domestic right may also vest in the state. While from the point of view of international law, a state, as against other states, has the right of property over all territorial and non-territorial possessions within its limits, yet the effect of this right is somewhat modified by the fact of public or private ownership, particularly as regards the laws of war, neutrality, and intercourse.

36. Intercourse

In early periods of history, intercourse among states was very limited and sometimes even prohibited. At the present time the necessities of state existence presuppose, in international law, the recognition of the right of intercourse in order that state business may be transacted. The principles upon which this intercourse is carried on are well established, and form the basis of diplomatic practice.

[1] Story, *Santissima Trinidad*, 7 Wheat. 354.

OUTLINE OF CHAPTER VIII

EXISTENCE

37. APPLICATION OF THE RIGHT.

(*a*) Right to take measures necessary for self-defense.

(*b*) Responsibility for acts.

(*c*) Right to administer internal affairs.

38. EXTENSION OF THE RIGHT TO SUBJECTS OF THE STATE.

CHAPTER VIII

EXISTENCE

37. Application of the Right

THE right of existence in its exercise may lead to certain acts for which the general principles of international law do not provide rules.[1]

Right to take measures necessary for self-defense.

(*a*) In face of actual dangers immediately threatening its existence, a state may take such measures as are necessary for self-preservation, even though not sanctioned by international law. Such measures, however, must be from "a necessity of self-defense, instant, overwhelming, and leaving no choice of means and no moment for deliberation," and further "must be limited by that necessity and kept clearly within it."[2] The wide discussion of the case of the *Virginius* flying an American flag, taken October 31, 1873, on the high seas by a Spanish vessel of war on the ground of furnishing aid to Cuban insurgents involved the principle of the limits of the right of self-defense.[3] In this case it was maintained that no "imminent necessity of self-defense could be alleged" justifying the execution after summary trial of persons on board.

Responsibility for acts.

(*b*) The plea that action contrary to international law has been to preserve the existence of a state will not free the state so acting from responsibility for its acts, and the acts may be regarded as cause for war by the state which has suffered. Spain paid $80,000 as in-

[1] Hall, p. 278.
[2] *Caroline*, 1 Whart. § 50 c; 2 *ibid.*, § 224.
[3] 2 Moore, pp. 895, 967, 980; U. S. For. Rel. 1875, vol. II, p. 1178.

demnity for the execution of six American citizens on board the *Virginius*.

(*c*) As the domestic acts of a state are not within the province of international law, a state has the right to administer its internal affairs in such manner as it may determine fit to secure and further its existence. It may adopt any form of government; may plan for its growth by developing its resources, by encouraging immigration; may strengthen defenses and forces; may regulate trade, commerce, and travel. While acts of this character may work injury to other states, they are not in general just grounds for war, but may properly be met by like acts on the part of other states.

Right to administer internal affairs.

38. Extension of the Right to Subjects of the State

As the subjects of a state are necessary for its existence, the right of self-preservation had been held to justify certain acts of states to secure to their subjects in their relations with foreign states such rights as the foreign states would accord to their own subjects under similar circumstances.[1] That a local tribunal within a purely domestic division of a state cannot secure to foreigners rights to which they are entitled, in no way frees that state, whose sovereignty extends over such domestic division, from responsibility for violation of the foreigner's right. International law recognizes only the personality of the sovereign political unity, and cannot recognize the administrative and other subdivisions. Italy assumed a correct position in holding the United States government responsible for the murder of Italian subjects while in custody of officers of the State of Louisiana in 1891.[2] Hall says: "States possess a right of protecting their subjects abroad which is correlative

[1] Borchard, "Diplomatic Protection," p. 349.

[2] U. S. For. Rel. 1891, pp. 628–658; "New Orleans *v.* Abbagnato," 62 Fed. Rep. 240; I Butler, "Treaty-making Power," 149–166; I Hyde, 516.

to their responsibility in respect of injuries inflicted upon foreigners within their dominions." [1]

Formerly it was maintained that a state should protect its nationals against breach of money agreement by a foreign state, but in recent years such controversies have more and more been settled through courts either directly by the parties or by agreements indirectly reached through the states.[2]

[1] Hall, p. 287.

[2] See Hague Court Award, French Claims against Peru, October 11, 1921.

OUTLINE OF CHAPTER IX

INDEPENDENCE AND INTERDEPENDENCE

39. MANNER OF EXERCISE OF THE RIGHT.

40. EUROPEAN BALANCE OF POWER.

41. MONROE DOCTRINE AND AMERICAN POLICIES.
    - (*a*) The Monroe Doctrine.
        - (1) Reservation made by the United States in regard to the Monroe Doctrine.
        - (2) A policy of the United States, not a principle of international law.
        - (3) Extent to which it has been recognized.
        - (4) Proposed extension.
    - (*b*) Other American policies.
        - (1) Early congresses of South American states.
        - (2) Pan-American Conferences, their aims and results.
        - (3) Certain principles observed only in the western hemisphere.

42. NON-INTERVENTION.

43. PRACTICE IN REGARD TO INTERVENTION.
    - (*a*) Intervention for self-preservation.
    - (*b*) Intervention to prevent illegal acts.
    - (*c*) Intervention by general sanction.
    - (*d*) Other grounds of intervention.
        - (1) To carry out treaty stipulations.
        - (2) To preserve the balance of power.
        - (3) On the grounds of humanity.
        - (4) To act as mediator in time of civil war.
        - (5) On the ground of financial transactions.
    - (*e*) Intervention justifiable only on ground of self-preservation.

CHAPTER IX

INDEPENDENCE AND INTERDEPENDENCE

39. Manner of Exercise of the Right

While according to early theory there could be no limitation or restriction of independence, because it was a recognized principle that independence must be absolute and inalienable, yet in reality interdependence rather than independence is becoming the rule among states. In fact, every state, in order that it may live at peace in the family of nations, voluntarily accepts either formally by treaty or tacitly by practice, many conditions which restrain it in the exercise of its powers. The independence of the state is not thereby violated, since the restraint is exercised by the state itself, and is not an act of external political control. The number of these restraints which states voluntarily assume is continually increasing, owing to the closer relations of humanity. The provisions of the Covenant of the League of Nations, 1919, and the action of the League Assembly show increasing international coöperation.

The exercise of the right of independence involves the privilege of making treaties, alliances, contracts, and municipal laws, so far as these do not violate international law or the right of independence as possessed by other states. A state may go to war to maintain its independence.

40. European Balance of Power

Undoubtedly the idea of establishing a relationship of interdependence among "neighboring states more or less connected with one another, by virtue of which no one among them can injure the independence or essential rights of another without

meeting with effectual resistance on some side and consequently exposing itself to danger" [1] is not a modern idea. Ancient states united to prevent the growth of some neighboring power to such magnitude as would threaten their independence.[2] From the beginning of the modern period of international law, Peace of Westphalia (1648), the idea of maintaining an equilibrium among the powers of Europe has had great influence and until the latter part of the nineteenth century was regarded as one of the fundamental principles of European international practice. Many treaties aim to preserve this balance among the European powers, and the words "balance" and "equilibrium" often appear.[3] The Treaty of Utrecht in its provision between Spain and Great Britain, July 13, 1713, gives as its object *ad firmandam stabiliendamque pacem ac tranquillitatem christiani orbis justo potentiae equilibro.* The idea that independence was to be preserved by some balance of power reappears in successive treaties. This plea of the balance of power has led to most diverse action. Unjust rulers have made it the cloak for action entirely outside the sanction of international law. Many times it has "served as the pretext for a quarrel, and repeatedly made hostilities general which would otherwise have been shut up within a comparatively small area." [4] The feeling that the balance of power was a necessary policy for the preservation of European states, led to the idea that states should be constrained to certain lines of action,which would prevent, in many cases, normal growth. Frequently the independence of a state was violated to anticipate an action which might disturb the European equilibrium. The partitions of Poland in the eighteenth century show a violation of the principles of international law for the sake of giving equal compensation to the parties to it.

[1] Von Gentz, "Fragments upon the Balance of Power in Europe," 1806.
[2] Hume, "Essays," VII.
[3] Nys, "Origines," pp. 165 ff.
[4] Bernard, "Lectures on Diplomacy," 98.

The doctrine of the balance of power is not a principle of international law, but merely a maxim of European political practice pretending to state the means of maintaining the independence of European states.[1]

41. Monroe Doctrine and American Policies

(a) Another maxim of political action is that which has become known as the "Monroe Doctrine."[2] While enunciated by a single state, it had in view the maintenance of the independence of the states of the American continent. For many years after the Revolutionary War the opinion prevailed that Europe viewed with disfavor the growth of the American republic. The Holy Alliance, formed on the downfall of Napoleon, was followed by several congresses of European powers, at one of which, held at Verona in 1822, the subject of helping Spain recover her revolting colonies in America was discussed. This led to the declaration of President Monroe in his message of December 2, 1823, that there should be (1) no more European colonies on these continents, (2) no extension of the European political system to any portion of this hemisphere, (3) no European interposition in the affairs of the Spanish-American republics. This doctrine has been repeatedly affirmed by the United States, and in some instances very liberally interpreted. It in no way embodies a principle of international law, though the European and other states may regard it as expressing the attitude of the United States upon the points covered, and if desirous of avoiding friction, govern themselves accordingly.

The Monroe Doctrine.

(1) The United States, in signing the Hague Convention for the Pacific Settlement of International Disputes in 1899, made the following reservation: "Nothing contained in this con-

[1] Tucker, "Monroe Doctrine," 4.

[2] Hart, "Monroe Doctrine"; Kraus, "Die Monroedoktrin." For documentary material, see 6 Moore, §§ 927–969.

vention shall be so construed as to require the United States of America to depart from its traditional policy of not intruding upon, interfering with, or entangling itself in the political question of any foreign state; nor shall anything contained in the said convention be construed to imply a relinquishment by the United States of America of its traditional attitude towards purely American questions." In ratifying on April 2, 1908, this same convention as revised at the Second Hague Conference in 1907, the Senate of the United States made the same reservation.

Reservation made by the United States in regard to the Monroe Doctrine.

(2) If the Monroe Doctrine were a principle of international law, the United States would not be justified in changing its attitude upon the doctrine, but probably it would not be seriously maintained that the United States might not enunciate another policy setting aside the Monroe Doctrine.[1] Reddaway well says, "that it produced its desired effect as an act of policy, but in no way modified the Law of Nations." [2]

A policy of the United States, not a principle of international law.

(3) The doctrine [3] has always failed of direct legislative indorsement in the United States. At times it has been strenuously opposed by European powers. That it has been recognized, however, to a certain extent, appears by the course of events.[4] It was in 1895 applied in the case of the intervention by the United States in the dispute over the

Extent to which it has been recognized.

[1] Hart, "The Monroe Doctrine," pp. 349 ff.

[2] "The Monroe Doctrine," VI.

[3] President Roosevelt in his message of December 3, 1901, said: "The Monroe Doctrine should be the cardinal feature of the foreign policy of all the nations of the two Americas, as it is of the United States . . . . The Monroe Doctrine is a declaration that there must be no territorial aggrandizement by any non-American power at the expense of any American power on American soil. . . . We do not guarantee any state against punishment if it misconducts itself, provided that punishment does not take the form of the acquisition of territory by any non-American power."

[4] See Tucker, "Monroe Doctrine," p. 116.

boundary between Venezuela and British Guiana. Arbitration settled this difficulty.[1] In 1902, after use of force to collect claims against Venezuela, Germany, Great Britain, and Italy disavowing intention to acquire territory, submitted to arbitration.[2] Article 21 of the Treaty of Versailles recognizes the Monroe Doctrine as a regional understanding "for securing the maintenance of peace."

Proposed Extension.

(4) Before the Senate, January 22, 1917, President Wilson proposed the adoption of the Monroe Doctrine as "the doctrine of the world; that no nation seek to extend its polity over any other nation or people, but that every people should be left free to determine its own polity."

(*b*) Other American policies have gradually been developed in the western hemisphere. The proclamation of the Monroe Doctrine emphasized the growth of the feeling that the states of America had interests peculiarly American. The American states which had so recently broken from European allegiance soon began their endeavor to unite for common action on American matters.

Other American policies.

Early congresses of South American states.

(1) A congress of American states was called at Panama in 1826.[3] This Congress of Panama did not realize the hopes which had been entertained by some upon the possibility of developing a distinctively American policy. It had, however, among its objects the promotion of peace and union of American nations. In 1831, another similar congress was called. Five South American states met at Lima in 1847. During the next forty years there were several congresses called with the idea of bringing the South American states into closer union and with

[1] Ann. Cycl. (1895), p. 741; (1896), p. 804; (1899), p. 845, also U. S. For. Rel. 1896.

[2] U. S. For. Rel. 1903, pp. 417 ff.; 542 ff.; 601 ff.; U. S. For. Rel. 1904, p. 509.

[3] American State Papers, 5 For. Rel., 839–905.

the idea of providing means for the maintenance of amicable relations among these states particularly through mediation and arbitration.

(2) In 1888, after a considerable period of discussion, the United States Congress authorized the President to call a Pan-American Conference to meet at Washington in 1889. This Conference voted various recommendations concerning the general and particular relations of the American states. Questions of private international law received much attention. Arbitration was indorsed as a means of settling international controversies. Other matters, as extradition, patents, trademarks, etc., were discussed. This Conference was followed by the Second Conference at Mexico, in 1901–1902, and the Third at Rio Janeiro, in 1906. Resolutions were adopted at this conference providing for the negotiation of conventions covering: (*a*) the status of naturalized citizens returning to the country of their origin; (*b*) the codification of public and private international law; (*c*) patents, trademarks, and copyright law; and (*d*) arbitration of pecuniary claims. The First Pan-American Scientific Congress held at Santiago, Chile, 1908–1909, gave much attention to international questions of special interest to the American states. Subsequent congresses have taken similar action.

Pan-American Conferences, their aims and results.

(3) There have come to be in the Western Hemisphere certain accepted international policies in which the European states have only a remote or occasional interest. Certain principles which European states have not yet admitted have by treaty been extensively adopted among American states, as in the case of the principle of obligatory arbitration in the event of international differences. The South American states have in the instance of Chile and the Argentine Republic, by the convention of May 28, 1902, led in the limitation of arma-

Certain principles observed only in the Western Hemisphere.

ments.[1] There has been manifested among the American states in recent years an increasing tendency to stand together and to develop policies which are American in character. As in Europe there has grown up the idea of the balance of power, so common interests and ideals have developed to some extent an American or Pan-American policy.[2]

42. Non-intervention

With the right of independence goes the correlative *obligation of non-intervention, i.e.*, of refraining from all acts that would forcibly limit the freedom of another state. This obligation of non-intervention does not extend to the limitation of acts involving no display or threat of force, as in the case of mediation and arbitration. Nor can it be claimed that the *obligation of non-intervention* can be urged against measures undertaken by a state to preserve its fundamental right to existence. There is no *right* of intervention, as has been sometimes argued, though an act of intervention may be sometimes justifiable in itself.[3] Intervention is the attempt of one or more states, even by use of force, to coerce another state in its purely state action. The making of an alliance between two may influence a third state in its action, but it cannot be considered an intervention, nor is the tender of friendly offices in the settlement of a dispute to which a state is a party, intervention; but when a state directly interferes with the exercise of the lawful state authority in or by another state, it constitutes intervention. Intervention may vary greatly in degree and in character, whether it be armed or diplomatic. Each case must be considered separately on its merits, and if in any degree a justifiable measure, it must be on the highest grounds, and the motives of the intervening state must be pure. While it is still necessary to discuss the question of intervention in its

[1] I A. J. I. L. Doc., p. 294. [2] Moore, "American Diplomacy," X.
[3] Bonfils, No. 295, "Pradier-Fodéré," No. 355.

various forms, yet, as Hall says: "It is unfortunate that publicists have not laid down broadly and unanimously that no intervention is legal, except for the purpose of self-preservation, unless a breach of the law as between states has taken place, or unless the whole body of civilized states have concurred in authorizing it." [1] Collective intervention may be sanctioned under a league of nations.

43. Practice in Regard to Intervention

The nineteenth century might be called the century of interventions, for its whole political history has been closely related to the application of measures of intervention of the most varied sort. Naturally, all authorities do not agree as to the causes underlying the action of the several states, nor as to the nomenclature which should be used in describing these measures. A review of some of the cases of intervention during the nineteenth century shows that while the doctrine of non-intervention has been more and more widely professed, the practice has been strongly influenced by political expediency.

Intervention for any cause may always be regarded by the state whose independence is impinged as a hostile act, and a ground for war, thus putting the matter outside the international law of peace.[2]

(*a*) As the right of existence is the first right of a state and universally admitted, intervention may sometimes be used as means of maintaining this existence. In such a case it is clearly a matter of policy as to the means which a state shall use, and if it resorts to intervention rather than other means, it must have ample grounds for its action in the particular case. A case of intervention on the grounds of self-preservation which has caused much debate is that of England in the two attacks upon Copenhagen in 1801 and 1807, on the ground that it was necessary

Intervention for self-preservation.

[1] Hall, p. 298.

[2] *Ibid.*, p. 293.

for England's supremacy of the seas, which formed her chief defense, to prevent the union of the Danish forces with those of the other powers. Intervention cannot be justified by any appeal to general principles which inhere in the act itself. "The facts of intervention are acts of the political existence of states. Good or bad, according as the intervention is injurious or beneficial." [1] Of intervention as a method of state action, Sir V. Harcourt says: "It is a high and summary procedure which may sometimes snatch a remedy beyond the reach of law. Nevertheless, it must be admitted that in case of Intervention, as in that of Revolution, its essence is illegality, and its justification is its success. Of all things, at once the most unjustifiable and the most impolitic is an unsuccessful Intervention." [2] Non-intervention is the obligation which international law enjoins. It gives no sanction to a "right of intervention" which would be entirely inconsistent with the right of independence. The question of intervention is one of state policy only, and is outside the limits of the field of international law. Intervention is a method of state action which is justifiable only in rare cases, and less and less justifiable as the growing mutual dependence of states makes possible other methods less open to objection. International law at the present day undoubtedly regards intervention, when *strictly* necessary to preserve the fundamental right of the intervening state to its existence, as a permissible act, though contravening the right of independence in another state.

Intervention to prevent illegal acts.

(*b*) As international law must rest upon the observance of certain general principles, it may in extreme cases be necessary to intervene in order that these principles may be respected by certain states in their dealings with other states which, though weaker in physical force, have equal rights in international law. How far any state will act as champion of the law of nations is a question

[1] Bonfils, No. 295.

[2] "Letters to Historicus," p. 41.

which it must decide for itself. Unquestionably international law would look with favor upon measures *necessary* for its own preservation.[1]

(*c*) Some authorities have maintained that intervention when sanctioned by a group of states is justifiable. It is probable that a group of states would be less willing to pursue an unjust course than a single state, and that intervention under such sanction would be more likely to be morally justifiable. It is, however, no more legal than the same act by a single state; and if general consent is the only sanction, while the act may be expedient, advantageous, and morally just, it cannot be regarded as upheld by international law, nor can a single act of this kind establish a principle. The several cases of such intervention under general sanction can hardly be regarded as sufficiently similar to establish a principle even upon the Eastern Question in Europe.[2] It may be concluded that while general sanction of a considerable group of states may, for a given interference, free a state from moral blame and warrant the act as a matter of policy, yet it does not give any international law sanction for intervention by general consent.

Intervention by general sanction.

(*d*) Many reasons have been advanced as justifying such measures as intervention.

Other grounds of intervention.

(1) Intervention to carry out provisions of treaties of guaranty was formerly common, *e.g.* intervention by one state to preserve the same form of government in the other or to maintain the ruling family. It is now held that no treaty can justify interference in the internal affairs of a state not party to the treaty.

To carry out treaty stipulations.

In general, intervention, because of treaty stipulations, even when the state subject to the intervention is a party to

[1] Stowell, "Intervention," p. 455.

[2] See Rolin-Jaequemyns, R. D. I., XVIII, 378, 503, 591.

the treaty, is a violation of independence unless the treaty provides for such measures, in which case the state has become a protected state or entered into relations by which it has not full state powers. Such treaties must be clearly state acts and not acts of individuals "who from their position have the opportunity of giving to their personal agreements the form of a state act." [1] While there is still difference of opinion as to the question of intervention under treaty sanction, the weight of opinion seems to be decidedly to the effect that such intervention has no ground of justification in international law.

To preserve the balance of power.

(2) Intervention to preserve the balance of power, which was regarded as a necessary means for the preservation of European peace, has been considered as justifiable till recent times. Since the middle of the nineteenth century the position has received less and less support, though advanced in behalf of the preservation of the Turkish Empire and of adjustments in the Balkan states. In 1854 Great Britain and France, on the appeal of the Sultan for assistance against the Russian aggressions, determined to aid him, "their said Majesties being fully persuaded that the existence of the Ottoman Empire in its present Limits is essential to the maintenance of the Balance of Power among the States of Europe." [2] The attitude at the present time seems to be that the independence of a state is not to be violated for the preservation of any political balance or historical adjustment of political relations.[3]

On the grounds of humanity.

(3) Interventions upon the broad and indefinite ground of humanity have been common and were generally upheld by the writers to the time of Vattel. Since his day opposition to intervention of this kind has gradually obtained favor. What the grounds of humanity are, and which nation's ideas of humanity shall be

[1] Hall, p. 297. [2] 2 Hertslet, 1181, 1193.
[3] Lawrence, § 67. See also 1 Halleck, 507.

accepted as standard, have been questions difficult to settle to the general satisfaction of states. For a state to set itself up as judge of the actions of another state and to assume that it has the right to extend its powers to settling and regulating affairs of morals, religion, and the relations of public authority to the subjects in another state, on the ground of maintaining the rights of mankind as a whole, is to take a ground which the conduct of any modern state, even the most civilized, would hardly warrant. While it is admitted that a state or states may sometimes interfere to prevent one state from unduly oppressing another, as in the intervention of the powers in Greece in 1827, yet it is generally held that to interfere because the internal affairs of a given state are not conducted in a manner pleasing to the foreign state is to give a sanction to an act that would result in far more evil than good. Such intervention has often taken place. The "Holy Alliance," in attempting to guard Europe from "the curse of Revolution," advocated in practice a most dangerous form of intervention.[1] Indeed, much of the European history of the nineteenth century is but a history of successive interventions. In spite of all this, as Walker says, "the rule regularly progresses towards more general recognition, that non-intervention in the internal affairs of a state is a law which admits of no exception to foreign powers, so long as the operations of that state are confined in their effect to the limits of the national territory." [2]

Nevertheless, the United States interfered in the affairs of Cuba on the ground of humanity. The President, in his message of April 11, 1898, said, after a long statement of the facts: "I have exhausted every effort to relieve the intolerable condition of affairs which is at our doors. Prepared to execute every obligation imposed upon me by the Constitution and the law, I await your action." [3] By joint resolution of Congress

[1] 1 Hertslet, 317. *Ibid.*, 658. [2] Walker, p. 151.
[3] Ann. Cycl. 1898, p. 159; U. S. For. Rel. 1898, p. 760.

of April 20, 1898, demand was made upon Spain to relinquish its authority in Cuba, and the President was authorized to use land and naval forces to carry the resolution into effect.[1]

(4) In time of civil war, on invitation of both parties, a foreign state may act as mediator, but unless the revolting party has been recognized, this is mediation in a domestic sense rather than intervention in the sense of international law.

To act as mediator in time of civil war.

Under other conditions there is a diversity of view as to the proper course of action.[2] Some deny with Vattel, G. F. de Martens, Heffter, Fiore, Bluntschli, Woolsey, and others maintain or permit intervention in civil war at the request of one of the parties, though some of the authorities do not permit intervention except on the invitation of the parent state and not on that of the rebelling party. Bluntschli (§ 476) and Woolsey (§ 42) admit intervention only in behalf of the party representing the state; Vattel and some others permit intervention in behalf of the party which the intervening state considers to have the right of the contest, thus opening the arbitration of the contest to a foreign state. Both of these positions are receiving less and less of sanction. Intervention in behalf of the established state implies a doubt as to which power within the state is the *de facto* power, and as Hall says: "The fact that it has been necessary to call in foreign help is enough to show that the issue of the conflict would without it be uncertain, and consequently that there is a doubt as to which side would ultimately establish itself as the legal representative of the state."[3] It is plain to see that intervention in behalf of the rebelling party is a violation of the independence of the existing state. It is equally clear that international law does not give a foreign state a right to judge upon the justice or merits of domestic questions in another state.

[1] 30 U. S. Sts. at Large, 738. [2] Bluntschli, § 477. [3] Hall, p. 302.

The principle may now be regarded as established by both theory and practice that the invitation of neither party to a domestic strife gives a right to a foreign state to intervene, and that no state has a right to judge as to the merits of the contest and to interfere in behalf of the party it thinks in the right. Indeed, intervention because of civil war only is in no case justifiable, though the consequences of such a disturbance may warrant intervention upon other grounds.[1]

(5) Intervention on the ground of financial transactions is not now sanctioned. A state may make any injustice done its subjects by a foreign state a matter of diplomatic negotiations. It has sometimes been held that contracts running between a state and the subject or subjects of another state may, if violated, become grounds of just intervention, and that the subjects had a right to demand action by their sovereign. This ground is manifestly insufficient, though each state is judge as to what measures it will take in a given case. International law does not guarantee the payment of loans which are merely personal transactions between the individual and the state in its corporate capacity, nor can the public law of one state be expected to hold in another. Interference on such grounds is a matter of expediency and not a matter of right. An attempt was made at The Hague in 1907 to embody the principles of the Drago Doctrine in a Convention which should prohibit "recourse to armed force for the recovery of contract debts claimed from the Government of one country by the Government of another country as being due to its nationals."

On the ground of financial transactions.

(*e*) In general, the best authorities seem to agree that at the present time, owing to the ease with which other measures may be taken, intervention can be admitted only on the single ground of self-preservation. The numerous cases of intervention upon varied grounds amply show that any other

[1] 1 Hertslet, 664 ff.

ground would be open to wide abuse, as has often been the case. For general purposes of remedy for injury such measures as retorsion, reprisals, embargo, and pacific blockade may be taken when a state deems it expedient and is willing to assume the responsibility for such measures.[1] While intervention for the sake of preserving the existence of a state which is observing its international obligations as a member of the family of nations is a justifiable measure, it is not a *right*, but merely a means sometimes justifiable to preserve a right, — the right of a state to exist, which alone supersedes the obligation of non-intervention.

Intervention justifiable only on grounds of self-preservation.

[1] See Ch. XV.

OUTLINE OF CHAPTER X

EQUALITY

44. EQUALITY OF STATES EXTENDS ONLY TO LEGAL STATUS

45. INEQUALITIES AMONG STATES.

- (*a*) Court precedence an old mark of inequality.
- (*b*) Various inequalities in matters of ceremonial still exist.
- (*c*) Inequalities in weight of influence in affairs.
  - (1) At the present time states classified on political grounds.
    - (*a*) The Great Powers.
    - (*b*) Instances of the practice of the Great Powers.
    - (*c*) Policy liable to change with expediency.
  - (2) European alliances.
  - (3) Influence of the United States among American states.

CHAPTER X

EQUALITY

44. Equality of States Extends Only to Legal Status

THE equality of states was an early premise of international law.[1] This equality, however wide may have been its meaning, as interpreted by some of the earlier writers, can now be held to extend only to legal status. A state from its very being as a sovereign unity must be legally equal to any other state. Only those states which are members of the international circle are regarded as possessed of this equality from the point of view of international law. So far as legal attributes as *states* extend, the states, members of the international circle, are equal, yet that their weight in the world of affairs may vary by virtue of other circumstances must be admitted. The legal status of states is the same; regardless of the form of state organization, whether monarchy or republic; regardless of origin, whether by division or union of former states or even if created in a region hitherto outside the jurisdiction of any state; regardless of area, population, wealth, influence, etc.; regardless of relations to other states provided sovereignty is not impaired; regardless of any change in the form of state organization, as from a republic to a monarchy or even of a temporary lapse in the exercise of sovereignty.

45. Inequalities among States

While all states, members of the family of states, are equal in international law so far as their legal attributes are concerned, they may be very unequal in other respects.

[1] For full treatment, see Dickinson, "Equality of States."

Court precedence an old mark of inequality.

(*a*) One of the oldest marks of inequality is that of court precedence, which for many years was a fertile source of difficulty, and was at last settled to the extent of ranking by title of diplomatic representative by the Congress of Vienna in 1815.[1]

Various inequalities in matters of ceremonial still exist.

(*b*) Inequalities in matters of ceremonial of various kinds have not disappeared. These may be based upon tradition, or on conventional grounds, and frequently give rise to difficulties if disregarded. These ceremonials may be (1) political, as between the sovereigns in their official personal capacity as emperors, kings, dukes, etc., (2) court and diplomatic, in interstate negotiations, (3) treaty, as in *alternat* or in the alphabetical signing of treaties, (4) maritime ceremonial, in salutes, etc.

(*c*) There may be inequalities in weight of influence in affairs.

Inequalities in weight of influence in affairs.

(1) In Europe there has been distinctly recognized in political practice an inequality of the states, and they were classed as "the great powers," "the minor powers," and sometimes such states as those of the Balkan peninsula were referred to as "the little powers" or "third-rate states." These divisions were based merely upon political grounds, and states might pass from one division to another as their wealth, area, or influence increased or decreased.

At the present time states classified on poli ical grounds; the Great Powers.

Before 1914 the Great Powers, generally mentioned *officially* upon the continent in the alphabetical order of their names in French, *i.e. Allemagne, Angleterre, Autriche,* etc., were Germany, Great Britain, Austria, France, Italy, and Russia. During the sixteenth and seventeenth centuries Spain was numbered with the Great Powers. Sweden was so ranked in the seventeenth century. Italy was counted with the great powers

[1] See Sec. 72 (*b*).

after 1870. The union of several powers upon certain lines of policy, since early in the nineteenth century, has been called "the concert of Europe," "the primacy of the Great Powers," etc. It was not the purpose of these Great Powers to establish new rules of international law; but as enunciated by the five powers, November 15, 1818, it was "their invariable resolution never to depart, either among themselves, or in their relations with other states, from the strictest observation of the principles of the Rights of Nations." [1] Since the World War the Great Powers have been considered as the United States, the British Empire, France, Italy and Japan.

Instances of the practice of the Great Powers.

That the practice of the Great Powers has not been strictly in accord with the principles announced in 1818, a glance will show. The immediate action of Austria, Russia, and Prussia in the Congress of Troppau, 1820, carried the principle of interference in the internal affairs of states so far that Great Britain found itself compelled to dissent. This continuance of the policy of the Holy Alliance in putting down movements in favor of popular liberty, wherever arising, led to gross violations of international rights. Nor did Great Britain become a party to the acts of the Congress of Verona in 1822, which led to intervention to prevent changes in the internal organization of Spain in 1823. The struggles of the Greeks for independence at about this time were naturally regarded by those upholding the ideas of the Holy Alliance as dangerous to those states desiring to prevent revolutionary movements, but the narrow policy of the Alliance was gradually losing support. The opposition of Great Britain and the death of Alexander of Russia in 1825 hastened its speedy fall. Meantime the idea of a collective authority in the Great Powers had been maintained. This began to be exercised in behalf of the Greeks in 1826, and throughout the nineteenth century was repeatedly

[1] 1 Hertslet, 574.

exercised in the same behalf, sometimes unselfishly, often from motives of mixed character. During the first half of the nineteenth century the Great Powers continually kept a close surveillance over Grecian affairs, and enforced their judgments in regard to Greece by force (destruction of Turkish fleet at Navarino, 1827); by providing form of government and naming monarch (1829 and later); by fixing and changing boundaries (1829 and often); by pacific blockade (1827, 1850, 1886, 1897); by regulating financial affairs, and by other means of varying degree of force.[1]

The Eastern question particularly occupied the Concert, and the disposition of the territory once within the Turkish jurisdiction offered a fertile field for varying policy. The establishment of Belgium as a neutral state by the treaty to which Belgium was itself a party afforded another example of the influence of the Great Powers. Since 1839 Egypt has also been subject to frequent control by the Great Powers.

From 1885 the unappropriated portion of Africa was brought within the range of action of the Concert by the theory of the sphere of influence.

The Concert of the Great Powers showed a policy that was liable to change with expediency. The two great treaties of the Concert were those of Paris, 1856, and Berlin, 1878. Of these Holland says: "The treaties of Paris and of Berlin thus resemble one another, in that both alike are a negation of the right of any one Power, and an assertion of the right of the Powers collectively, to regulate the solution of the Eastern question." [2] The fact that the action of the Great Powers has been regarded as binding and tacitly accepted in Europe in certain questions in the East, Egypt, Greece, and Belgium does not give the

Policy liable to change with expediency.

[1] For detailed summary, 1826–1881, see Holland, "European Concert in the Eastern Question," Ch, II.

[2] "European Concert in the Eastern Question," p. 221.

sanction of international law to the action. The most that could be said was that it was an alliance of a loose character, whose authority was in proportion to the force behind its decisions.[1]

(2) Another feature in European politics giving rise to further inequalities in practice was introduced by the alliance of Germany and Austria in 1879 and Italy in 1882, which was till 1914 commonly known as the Triple Alliance. The policy of this belt of powers separating Eastern from Western Europe materially affected the action of the other powers. The "friendly understanding" between France and Russia soon after the Triple Alliance afforded a measure of counter-check upon the action of the other powers.

European alliances.

The exact terms of the compact of Germany, Austria-Hungary, and Italy were not divulged at the time, although co-operation was assured in the event of hostile relations. The Alliance did not prevent friendly relations between the parties to it and the other powers.[2]

(3) The United States upon the American continent in the enunciation of the Monroe Doctrine, and in the interpretation of it, assumed at times a position as arbiter among the American states in some respects similar to that of the European Concert among the European states. This attitude of the United States has weight in international practice, but cannot be regarded as part of international law.

Influence of the United States among American states.

[1] Lawrence, "Disputed Questions," V.

[2] Pribram, "Secret Treaties of Austria-Hungary," p. 65.

OUTLINE OF CHAPTER XI

JURISDICTION

46. JURISDICTION IN GENERAL.

47. TERRITORIAL DOMAIN AND JURISDICTION.

48. METHOD OF ACQUISITION OF TERRITORIAL JURISDICTION
   - (*a*) By right of discovery of a new land.
   - (*b*) By effective and continued occupation of a territory.
     - (1) The Hinterland Doctrine.
     - (2) Uncivilized peoples the rightful occupants of the soil.
   - (*c*) By conquest of a territory, usually a result of military occupation.
   - (*d*) By cession through the transfer of territory.
     - (1) By gift.
     - (2) By exchange.
     - (3) By sale.
     - (4) By special agreement.
   - (*e*) By prescription, or long-continued possession.
   - (*f*) By accretion, or change in land areas near the boundary of a state.
   - (*g*) By lease.

49. QUALIFIED TERRITORIAL JURISDICTION.
   - (*a*) In protectorates the external affairs and international relations are usually under the direction of the protecting state.
   - (*b*) In a sphere of influence the aim is to secure the rights without all the obligations.
   - (*c*) In areas under mandates under the League of Nations.

50. MARITIME AND FLUVIAL JURISDICTION.

51. JURISDICTION OF RIVERS.
   - (*a*) Rivers which traverse only one state.
   - (*b*) Rivers which traverse two or more states.
   - (*c*) Rivers with opposite banks under jurisdiction of two different states.

52. THE NAVIGATION OF RIVERS.
   - (*a*) General rules for river navigation.
   - (*b*) Confirmation of rules by conventions.

53. JURISDICTION OF ENCLOSED WATERS.
   (*a*) Exclusive jurisdiction of a state over the waters wholly within its borders.
   (*b*) Jurisdiction over gulfs, bays, and estuaries in the state or states enclosing them.
   (*c*) Jurisdiction over straits less than six miles in width in the shore state or states.
      (1) Jurisdiction over the Danish sounds.
      (2) The Bosphorus and Dardanelles.
   (*d*) Jurisdiction of canals similar to that of straits.
      (1) The Suez Canal.
      (2) The Panama Canal.
      (3) The Corinth and Kiel Canals.

54. THE THREE-MILE LIMIT.
   (*a*) Statement and origin of the principle.
   (*b*) A wider limit sometimes claimed for special purposes.

55. JURISDICTION OVER FISHERIES.
   (*a*) Fishing on the high sea a right belonging to all states alike.
   (*b*) Special privileges in fishing, as in the case of the Canadian fisheries.
   (*c*) The disputed question of seal-fishing in the Bering Sea.

56. JURISDICTION OVER VESSELS.
   (*a*) Two classes of vessels.
      (1) Public.
      (2) Private.
   (*b*) Nationality of a vessel determined by its flag or papers.
   (*c*) General exercise of jurisdiction over vessels.
      (1) Exclusive over public and private vessels on high seas and in home waters.
      (2) Exclusive over public vessels in foreign waters in regard to matters of internal economy.
         (*a*) Extent of immunities of the persons on a ship of war in a foreign harbor.
         (*b*) The right of asylum on board a ship of war.
         (*c*) Immunities of other vessels in public service.
      (3) Varying over private vessels in foreign waters.
      (4) Special exemption of semi-public vessels.

57. AERIAL JURISDICTION.

58. JURISDICTION OVER PERSONS AND THE QUESTION OF NATIONALITY.

59. JURISDICTION OVER NATURAL-BORN SUBJECTS.

60. JURISDICTION OVER FOREIGN-BORN SUBJECTS.
   (*a*) The rule of jus sanguinis, *i.e.*, the child inherits the nationality of his father.
   (*b*) The rule of jus soli, *i.e.*, the place of birth determines the nationality.
   (*c*) Variations in laws.

61. JURISDICTION BY VIRTUE OF ACQUIRED NATIONALITY.
   (*a*) By marriage a woman in most states acquires the nationality of her husband.
   (*b*) By naturalization, or an act of sovereignty by which a foreigner is admitted to citizenship in another state.
   (*c*) By annexation of the territory upon which a person resides.
   (*d*) The effect of naturalization on a person in his relations to his adopted and native states.
   (*e*) Incomplete naturalization or the effect on a person of his declaration of intention to become a citizen.
      (1) Citizenship and liability to military service.
      (2) Municipal laws and naturalization.

62. JURISDICTION OVER ALIENS.
   (*a*) Qualified jurisdiction of native state over subjects abroad.
      (1) Right to make emigration laws.
      (2) Recall of citizens for special reasons.
      (3) Criminal jurisdiction over subjects who have committed crimes in a foreign state.
      (4) Protection of subjects in a foreign state.
   (*b*) Jurisdiction of a state over aliens within its territory.
      (1) Right of exclusion.
      (2) Right of expulsion.
      (3) Right to conditional admission.
      (4) Restrictions upon settlement.
      (5) Right to levy taxes.
      (6) Sanitary and police jurisdiction.
      (7) Jurisdiction for crimes committed within territorial limits.
      (8) Maintenance of public order.
      (9) No rights to demand military service for political ends.
      (10) Freedom of commerce.
      (11) Holding and bequeathing of property.
      (12) Freedom of speech and worship.
   (*c*) Passport a means for establishing the identity of an alien.

63. EXEMPTIONS FROM LOCAL JURISDICTION GENERALLY MADE FOR PERSONS REPRESENTING THE AUTHORITY OF A FRIENDLY STATE.
   (*a*) Extraterritoriality, or immunity from jurisdiction.

64. EXEMPTION FROM LOCAL JURISDICTION OF SOVEREIGNS SOJOURNING IN THEIR OFFICIAL CAPACITY IN FOREIGN COUNTRIES.

65. EXEMPTIONS OF STATE OFFICERS.
   (*a*) Wide immunity allowed diplomatic agents.
   (*b*) Exemptions granted to consuls to facilitate effective performance of their duties.
   (*c*) A foreign army entering a state, by permission of its sovereign, is free from that sovereign's jurisdiction.
   (*d*) A vessel of war in a foreign state free from local jurisdiction.

66. SPECIAL EXEMPTIONS.
   (*a*) In certain Oriental states special exemptions regulated by treaty.
      (1) General rules in regard to penal matters.
      (2) General rules in regard to civil matters.
   (*b*) Mixed courts in Egypt.

67. EXTRADITION.
   (*a*) Persons liable to extradition vary according to treaties.
   (*b*) Limitations as to jurisdiction over a person extradited.
   (*c*) Conditions necessary for a claim for extradition.
   (*d*) Procedure in cases of extradition based on definite principles.

68. SERVITUDES.
   (*a*) International servitudes, positive and negative.
   (*b*) General servitudes.

CHAPTER XI

JURISDICTION

46. Jurisdiction in General

JURISDICTION is the right to exercise state authority, and for the purposes of international law may be classified as (*a*) territorial or land jurisdiction, (*b*) fluvial and maritime, (*c*) aerial, and (*d*) jurisdiction over persons.

47. Territorial Domain and Jurisdiction

The word "territory" is sometimes used as equivalent to domain or dominion or to an expression covering the sphere of state control. Territory is also used in the stricter sense of the land area over which a state exercises its powers. In this stricter sense, territorial jurisdiction refers to the exercise of state authority over the land within its boundaries and over those things which appertain to the land. The growing international importance of railroads, telegraph, and other appurtenances has introduced new topics which were not considered in early treatises, and are still under discussion.

The fundamental law of territorial jurisdiction is that a state has within its boundaries absolute and exclusive jurisdiction over all the land and those things which appertain thereto. Certain exemptions are specially provided in international law to which all states are considered as giving express or tacit consent. In other respects than those mentioned under exemptions, the state may, as sovereign, exercise its authority at discretion within the sphere it has set for itself.

The state has, as against all other states, an exclusive title to all property within its territorial jurisdiction. As regards its own subjects, it has the paramount title which is recognized in the right of eminent domain, or the right to appropriate private property when necessary for public use. A state may also in its corporate capacity hold absolute ownership in property, as in its forts, arsenals, ships, etc., or may extend ownership to other forms of property provided this does not imperil international rights.

The state also has the right to enforce a lien on the land and what appertains to it in the form of taxes.

48. Method of Acquisition

The method of acquisition of territorial jurisdiction is a subject which has received much attention in international law, particularly because of the remarkable expansion of the territorial area of states within the modern period of international law since 1648.

The methods commonly considered are: (1) discovery, (2) occupation, (3) conquest, (4) cession, (5) prescription, (6) accretion.

By right of discovery of a new land.

(*a*) In the early period of European expansion through discovery, the doctrine that title to land hitherto unknown vested in the state whose subject discovered the land, was current. Gross abuse of this doctrine led to the modification that discovery without occupation did not constitute a valid title to jurisdiction. As the field of discovery has grown less, the importance of a definition of occupation has decreased.

(*b*) Occupation was held to begin at the time of effective application of state authority, and strictly to continue only during the exercise of such authority. In fact, however, the title by occupation was also held to extend to the adjacent unoccupied territory to which the state might potentially extend

the exercise of its authority, or where it might from time to time exercise its authority in an undisputed manner. Title by occupation extended as a rule to that area, not under the jurisdiction of another state, which was necessary for the safety of the occupied area or was naturally dependent upon it, as to the territory drained by a river of which a given state held the mouth.

By effective and continued occupation of a territory.

(1) The "Hinterland Doctrine," brought forward during the later years of the nineteenth century, advanced the idea that no such limits as above should bound the area which could be claimed on ground of occupation, but that coast settlements gave a *prima facie* title to the unexplored interior.

(2) While the uncivilized peoples living within an area to which a civilized state claimed jurisdiction by virtue of occupancy were often unjustly treated, they however "were admitted to be the rightful occupants of the soil, with a legal as well as just claim to retain possession of it, and to use it according to their own discretion, though not to dispose of the soil at their own will, except to the government claiming the right of preëmption. . . . The United States adopted the same principle, and their exclusive right to extinguish the Indian title by purchase or conquest, and to grant the soil, and exercise such a degree of sovereignty as circumstances required, has never been judicially questioned." [1]

Uncivilized peoples the rightful occupants of the soil.

(*c*) Conquest in the technical sense of the status of a territory which has come permanently under the jurisdiction of the enemy is distinct from military occupation, which is a simple fact supported by force.

By conquest of a territory, usually a result of military occupation.

Military occupation may pass into conquest (1) by actual occupation for a long period, with intention on

[1] 3 Kent Com. 379, 380; 5 U. S. Comp. Sts. §§ 3980 et *seq.*

the part of the occupier to continue the possession for an indefinite period, provided there has not been a continued and material effort upon the part of the former holder to regain possession. If, after a reasonable time, this effort to regain possession seems futile, the conquest may be regarded as complete. Each state must judge for itself as to the reasonableness of the time and futility of the effort. (2) Conquest may be said to be complete when by decree, in which the inhabitants acquiesce, a subjugated territory is incorporated under a new state. (3) A treaty of peace or act of cession may confirm the title by conquest.[1]

(*d*) Transfer of territory by cession may be by gift, exchange, sale, or other agreement.

By cession through transfer by gift, exchange, sale, or other agreement.

(1) The *transfer by gift* is simple, and carries such obligations as the parties interested may undertake. In 1850, Great Britain ceded to the United States "Horse-shoe Reef" in Lake Erie, for the purpose of the erection of a lighthouse, "provided the Government of the United States will engage to erect such lighthouse, and to maintain a light therein; and provided no fortification be erected on said Reef." [2]

(2) *Transfer of territory by exchange* is not common in modern times. By the Treaty of Berlin, 1878, a portion of Bessarabia, given to Roumania by the Treaty of Paris, 1856, was given back to Russia, and Roumania received in exchange a portion of Turkey.[3]

(3) *Transfer of territory by sale* has been frequent. From 1311, when the Markgraf of Brandenburg sold three villages to the Teutonic knights, down to modern times, instances of sale might be found, but from the nineteenth century numerous instances occurred which have established the principles.

[1] In case of the United States, while the President may after declaration of war conquer and hold foreign territory, the joint action of the President and Senate is necessary to make the title complete by treaty.

[2] 1 Treaties of U. S. 663.

[3] IV Herts.et, 2745, 2791.

Napoleon sold Louisiana to the United States in 1803, the Prince of Monaco made a sale to France in 1851, Russia sold Alaska to the United States in 1867, the Netherlands sold African colonies to Great Britain in 1872, Sweden sold the island of St. Barthélemy to France in 1877, the United States bought the Philippines in 1898 and the Virgin Islands in 1917. The fact of the sale is not a matter of international law, but is purely within the range of the public law of the countries concerned. The change of jurisdiction of the area gives rise to certain possible complications which may involve principles of international law, though generally the conditions of sale settle such questions.

(4) *Transfers of territory by special agreements*, as payment of an indemnity, reparation for an injury, or the like have taken place.

(*e*) Prescription, or the acquisition of territory by virtue of long-continued possession, is similar to prescription in private law as applied to the acquisition of property by persons.[1] The recognition of this principle prevents many disputes over jurisdiction of territory which originally may have been acquired in a manner open to question, *e.g.* the holding of the territory by the states parties to the partition of Poland might, through long-continued possession, become valid by prescription if not valid by the original act.

By prescription, or long-continued possession.

In regard to prescription, it should be observed that (1) it is a title valid only against other states. The inhabitants do not necessarily lose rights originally possessed. (2) This method avoids perpetual conflicts on ground of defect of original title. (3) Prescription may be considered as effective when other states have for a considerable time made no objection threatening the exercise of jurisdiction by the state in possession. While some authors deny this right, it is generally admitted in

[1] Indiana *v.* Kentucky, 136 U. S. 479; Maryland *v.* West Virginia, 217 U. S. 1.

fact, and by most of the leading authorities acknowledged in theory.[1]

(*f*) When land areas in the neighborhood of the boundary of a state are changed, territory may be acquired by accretion.

By accretion, or change in land areas near the boundary of a state.

(1) Land formed by *alluvium* or other cause near the coast of a state is held to belong to that state. Lord Stowell, in 1805, held that mud islands formed by *alluvium* from the Mississippi River should for international law purposes be held as part of the United States territory.[2] In general, following the Roman law, *alluvium* becomes the property of the state to which it attaches.[3] (2) Where a river is the boundary, the rule is well established that islands formed on either side of the deepest channel belong to the state upon that side of the channel; an island formed mid-stream is divided by the old channel line. (3) When a river's channel is suddenly changed so as to be entirely within the territory of either state, the boundary line remains as before in the old channel. So also the boundary line of territory is not changed, even if the bed of a lake be changed.[4]

(*g*) *Transfer of jurisdiction by lease* became common from the latter part of the nineteenth century. Ordinarily these leases were for periods of twenty-five or ninety-nine years. China made many of these leases to European powers.[5] These powers proceeded to fortify the leased areas as would be usual in territory to which title was secured. The agreements of the Conference on Limitation of Armament, 1921–1922, provided for the return of some of the leased territory. The lease of Port Arthur was not considered.

The United States leased the Panama Canal Zone from

[1] See discussion in I Hyde, 192.

[2] The *Anna*, 5 C. Rob., 373.

[3] "Institutes," II, 1, 20.

[4] Cooley *v.* Golden, 52 Mo. App. 52; Missouri *v.* Nebraska, 196 U. S. 23; Nebraska *v.* Missouri, 197 U. S. 577.

[5] U. S. For. Rel. 1900, p. 383.

Panama in 1903 in perpetuity with " all the rights, power and authority " " which the United States would possess and exercise if it were the sovereign of the territory." The Convention provided for a payment of ten million dollars by the United States on exchange of ratifications and for an annual payment of $250,000 per year after nine years.[1]

49. Qualified Territorial Jurisdiction

Qualified territorial jurisdiction is exercised in protectorates, in spheres of influence, and in mandates.

(*a*) The protecting state usually acquires the jurisdiction over all external affairs of the protected community, often including territorial waters, and assumes the direction of its international relations. A measure of jurisdiction of those internal affairs which may lead to international complications is also generally assumed by the protecting state, *e.g.* treatment of foreigners in the protected territory, relations of protected subjects in foreign countries, use of flag, etc. The conditions of protected states vary greatly, hardly the same description holding for any two. It may be safe to say that (1) the protecting state cannot be held responsible for the establishment of any particular form of government; (2) a reasonable degree of security and justice must be maintained. As to what constitutes a " reasonable degree," the circumstances of each case must determine. The protecting state is bound to afford such justice and security. (3) The protecting state must be able to exercise within the protected area such powers as are necessary to meet its responsibilities.

In protectorates.

(*b*) The term " sphere of influence " was used after the Berlin Conference, 1884–1885, to indicate a sort of attenuated protectorate in which the aim was to secure the rights without the obligations. First applied to Africa in the partition of

[1] 2 Treaties, p. 1349.

the unexplored interior among the European powers — Great Britain, Germany, France, Italy, Portugal — it was later extended to other regions. This doctrine of mutual exclusion of each from the "spheres" of all the others cannot be held to bind any states not party to the agreement.

In a sphere of influence.

This "sphere of influence" idea, as well as the "Hinterland Doctrine," was of temporary importance only, owing to the limited area open to occupation. It was maintained that within the "sphere" the influencing state had jurisdiction to the exclusion of another state, and that it had a right to occupy the territory later, if advisable. The influencing state disclaimed all obligations possible.

(*c*) Article 22 of the League of Nations Covenant provides that "the tutelage" of certain regions "should be intrusted to advanced nations," "as mandatories on behalf of the League." "The character of the mandate must differ," according to circumstances, from administrative advice to control as "integral portions" of the mandatory state. "In every case of mandate, the mandatory shall render to the Council an annual report in reference to the territory committed to its charge." The territory was Turkish, Central and Southwest African, and Pacific Islands.

Mandates.

50. Maritime and Fluvial Jurisdiction

Wheaton states as a general principle of maritime and fluvial jurisdiction: "Things of which the use is inexhaustible, such as the sea and running water, cannot be so appropriated as to exclude others from using these elements in any manner which does not occasion a loss or inconvenience to the proprietor." [1] While the tendency of international policy is toward unrestricted freedom of river navigation, yet the principle as enunciated by Wheaton cannot be said to be established

[1] Wheat. D., § 193, p. 274.

in practice. The American and Continental writers have generally favored the principle enunciated by Wheaton. English writers have contended against this position as a right, but admit that the principle is becoming established by numerous treaties and conventions. As to the high sea, the principle may be said to be established.

51. Jurisdiction of Rivers

The jurisdiction of rivers is a question which is not identical with the right of navigation of rivers, and may best be considered apart. The question of jurisdiction is one of general international principle, while the question of river navigation is, in many instances, one of particular provision.

The rivers fall under three classes: —

1. Rivers which traverse only one state.
2. Rivers which traverse two or more states.
3. Rivers upon the opposite banks of which different states have jurisdiction.

Rivers which traverse only one state.

(*a*) Rivers which traverse only one state are exclusively within the jurisdiction of that state. This jurisdiction may extend even to the forbidding of the use of a river to other states, and justifies the state in prescribing such regulations for its use as it may deem fit.

Rivers which traverse two or more states.

(*b*) Rivers flowing through two or more states are for those parts within the boundaries of each state under its jurisdiction for the purposes of police, tolls, and general regulations. The right of absolute exclusion of states above or below by any one of the states through which a river flows has been the subject of much discussion, and authorities of great weight can be found upholding either side.

(*c*) When two states have jurisdiction upon opposite banks of a river, the jurisdiction of each state extends to the middle

of the main channel or *thalweg*. Before the Treaty of Luneville (Art. VI), 1801, it had been common to consider the limit of jurisdiction of the two states the middle of the river, a line much more difficult to determine, and more changeable than the channel line. The *thalweg* has been frequently confirmed as the accepted boundary where no conventions to the contrary existed.[1] The jurisdiction over bridges between two states has by convention often been fixed at the middle point.[2]

Rivers with opposite banks under jurisdiction of two different states.

52. The Navigation of Rivers

The laws of jurisdiction of rivers are generally accepted. The early idea that there was a natural *right of navigation*, and *innocent passage*, received less support during the nineteenth century than formerly. The history of river navigation during the nineteenth century, as shown in the discussions between the representatives of various nations, and in the treaties and conventions agreed upon, as well as in treaties and declarations voluntarily made in regard to navigation of rivers, seems to furnish general rules:

(*a*) 1. That international law gives to other states no right of navigation of rivers wholly *within* the jurisdiction of another state.

General rules for river navigation.

2. That when a river forms the *boundary* of two or more states it is open to the navigation of each of the states.[3]

3. That when a river passes *through* two or more states, international law gives no right to one of the states to pass through the part of the river in the other state or states. There

[1] Ed. Engelhardt, "Du régime conventionnel des fleuves internationaux," Ch. II.; 1 Moore, § 128; Louisiana *v.* Mississippi, 202 U. S. 1.

[2] 2 Nys, 437.

[3] This was provided for in the Anglo-American Convention on Canadian Boundary waters, 1909.

is a strong moral obligation resting upon the states below to allow freedom of navigation through the river to the states upon the upper course of the river. The right of *innocent use, innocent passage, freedom of river navigation*, has been maintained on various grounds and in various forms, by many authorities.[1] Those who take a position opposed to this claim assert that the navigation of rivers is, and properly should be, to avoid more serious complications, a matter of convention.

(*b*) In fact, since the French Revolution, the subject has so frequently been a matter of convention [2] as to establish the general principles, that in case of no special restrictions, river navigation is free, subject to such regulations as the state having jurisdiction may deem necessary, and that the privilege of navigation carries with it the use of the river banks, so far as is necessary for purpose of navigation.[3] The Treaty of Versailles, 1919, internationalizes to a greater degree the river systems of Central Europe and places representatives of non-riparian states on commissions of control. [4]

Confirmation of rules by conventions.

53. Jurisdiction of Inclosed Waters

(*a*) The rule in regard to waters wholly within the territory of a state such as lakes, etc., is that the jurisdiction is exclusively in that state. The decisions of the United States Supreme Court have sometimes regarded the Great Lakes as "high seas," though treaties, opinions, and practice have generally been such as would find sanction only in exclusive jurisdiction.[5] The Boundary Waters

Jurisdiction on waters wholly inclosed.

[1] Grotius, II, ii, 12–14; Pufendorf, III, 3, 4; Vattel, §§ 104, 126–130, 132–134; Bluntschli, § 314; Calvo, §§ 259, 290–291; Fiore, §§ 758, 768; Carnazza-Amari, "Traité," § 2, Ch. VII, 17; Heffter, § 77; Wheat. D., § 193.

[2] Wheat. D., §§ 197–204; 1 Moore, § 129; Pradier-Fodéré, "Traité," §§ 727–755.

[3] Justinian, "Institutes," 2, t. 1, §§ 1–5.

[4] Arts. 327–362.

[5] United States *v.* Rodgers, 150 U. S. 249.

Convention between the United States and Great Britain, 1909. opens to British vessels the navigation of Lake Michigan.[1]

(*b*) Gulfs, bays, and estuaries are regarded as within the jurisdiction of the state or states inclosing them, provided the mouth is not more than six miles in width. A line drawn from headland to headland, on either side of the mouth, is considered as the coast line of the state, and for purposes of maritime jurisdiction the marine league is measured from this line. Waters having wider openings into the sea have been claimed on special grounds, as the claim of the United States to territorial jurisdiction over the Chesapeake and Delaware bays. France and Germany claim jurisdiction over gulfs having outlets not over ten miles in width. Between states parties to treaties special claims have been made and allowed. These treaty stipulations do not necessarily bind states not parties to the treaty, *e.g.* treaty between Great Britain and France, 1839. "It is agreed that the distance of three miles, fixed as the general limit of the exclusive right of fishing upon the coasts of the two countries, shall, with respect to bays, the mouths of which do not exceed ten miles in width, be measured from a straight line drawn from headland to headland." [2]

Jurisdiction over gulfs, bays, and estuaries.

More recent tendency is toward the acceptance of the ten-mile limit of width of mouth, though there is a reasonable claim that some ratio should be fixed for very large interior water areas to which the entrance, though more than ten miles, is yet relatively narrow.[3] On August 7, 1914, Uruguay announced the ten-mile rule for purposes of neutrality. Netherlands had made a similar proclamation August 5, 1914. Italy by a decree of August 6, extended the limit to twenty miles, while Morocco for certain purposes assumed a twelve-mile limit on July18, 1917.

[1] Art. 1.

[2] 1 Moore, § 153.

[3] See also Question V, North Atlantic Fisheries Arbitration, 1910, Wilson, "Hague Arbitration Cases," 180.

(*c*) Straits less than six miles in width are within the jurisdiction of the shore state or states. In case two shores are territory of different states, each state has jurisdiction to the middle of the navigable channel.

Jurisdiction over straits.

Where a state owns both shores of a strait which does not exceed six miles in width, the strait is within its territorial jurisdiction, though other states have the right of navigation. This right of navigation is in general conferred upon both merchant and war vessels of states at peace with the territorial power. These vessels must, however, comply with proper regulations in regard to navigation. The claim to exclusive jurisdiction over such narrow straits has been abandoned.

The claim of the king of Denmark to jurisdiction over the Danish Sound and the Two Belts, which entitled him to levy tolls upon vessels passing through, was based on prescription and fortified by treaties as early as the one with the Hanse towns in 1368. Against these tolls, as an unjust burden upon commerce, the United States had protested for many years, sending a special mission to Denmark in 1811, at the same time maintaining that Denmark had not the right of exclusive jurisdiction. The European states in 1857 paid a lump sum in capitalization of the sound dues. The United States, refusing to recognize the right of Denmark to levy tolls, paid $393,011 in 1857 in consideration of Denmark's agreement to keep up lighthouses, etc.

Jurisdiction over the Danish sounds.

The navigation of the Bosphorus and Dardanelles has been a subject of discussion and treaty since 1774, when Russia compelled Turkey to open these straits to the passage of merchant vessels. War vessels were excluded till 1856 when, by convention attached to the Treaty of Paris, such vessels were admitted for special purposes of service to the embassies at Constantinople and protection of improvements on the Danube waterway. By the Treaty of 1871 the Sultan might admit other war vessels, if

The Bosphorus and Dardanelles.

necessary for carrying out terms of the Treaty of Paris. Provision for freedom of navigation of the Dardanelles, the Sea of Marmora, and the Bosphorus was made in the treaty of Sèvres, August 10, 1920. The United States has never acknowledged that the Sultan had the right to exclude its war vessels, though always asking permission of the Sultan to pass the Dardanelles. The United States contended for the opening of the Turkish Straits as a result of the World War.

As a generally accepted principle the law may be stated as follows: straits connecting free seas are open to the navigation of all states, subject of course to reasonable jurisdiction of the territorial power.

(*d*) Canals connecting large bodies of water have been regarded as in most respects subject to jurisdiction similar to that of straits. Yet as these canals are constructed at a cost, the state having jurisdiction must also be given right to apply certain restrictions which might not properly apply to natural channels.

Jurisdiction over canals.

The position of the Suez Canal as an international waterway gives some indication of existing practice.

It is to be noted, (1) that the canal is an artificial waterway; (2) that M. de Lesseps, a foreigner, in 1854, under authorization of the Viceroy, undertook its construction as a business venture; (3) that it is wholly within the territory of Egypt.

The Suez Canal.

The case is then one of an artificial waterway, constructed by private capital, wholly within the territory of a state.

The negotiations continued from 1869, when the canal was opened, to 1888, when a convention was signed by the Six Great Powers, and by the Netherlands, Spain, and Turkey, by which the status of the canal was defined. By Article I of the Conventional Act, "The Suez Maritime Canal shall always be free and open, in the time of war as in the time of peace, to every vessel of commerce or of war, without distinction of flag.

"Consequently, the High Contracting Parties agree not in any way to interfere with the free use of the Canal, in time of war as in time of peace.

"The Canal shall never be subjected to the exercise of the right of blockade."

By Article IV, the canal is not to become the base of hostile action. The marine league is to be respected in the action of foreign vessels. The twenty-four hour period is to elapse between the sailing of hostile vessels.

By Article VII, the powers may keep two war vessels in the "ports of access of Port Said and Suez," though "this right shall not be exercised by belligerents."

By Article X, the territorial jurisdiction for general administrative purposes is affirmed, and likewise for sanitary measures in Article XV.[1]

This Suez Canal of such great international importance was by this convention within the jurisdiction of Egypt, but the powers have assumed to provide that this jurisdiction shall not be exercised in such a way as to prevent innocent passage.

The Panama Canal.

The Hay-Pauncefote Treaty of 1901, setting aside the Clayton-Bulwer Treaty of 1850, leaves to the United States large jurisdiction over such canal as it may determine to construct across the Central American Isthmus, and it is also provided that the canal shall be neutralized substantially as in the manner set forth in the Convention in regard to the Suez Canal.[2]

Corinth and Kiel Canals.

The canal at Corinth, shortening somewhat the route to the Black Sea and Asia Minor, was opened in 1893. This canal does not, like the Suez, greatly change the current of the world's intercourse, and is entirely within the jurisdiction of Greece.

[1] Parl. Papers, 1889, Commercial, No. 2; Holland, "Studies in International Law," p. 270.

[2] For documents, see Diplomatic History of the Panama Canal, Sen. Doc. No. 474, 63d Cong. 2d Session.

Similarly the canal at Kiel, opened in 1896, was wholly within the jurisdiction of Germany, but by the Treaty of Versailles, 1919, it was to be open on terms of equality to all vessels.[1]

54. The Three-mile Limit

(*a*) One of the most generally recognized rules of international law is that the jurisdiction of a state extends upon the open sea to a distance of three miles from the low-water mark.[2] In the words of the Act of Parliament passed in consequence of the case of the *Franconia*,[3] 1878 (41 and 42 Victoria, c. 73), "The territorial waters of Her Majesty's dominions, in reference to the sea, means such part of the sea adjacent to the coast of the United Kingdom, or the coast of some other part of Her Majesty's dominions, as is deemed by international law to be within the territorial sovereignty of Her Majesty; and for the purpose of any offense declared by this Act to be within the jurisdiction of the Admiral, any part of the open sea within one marine league of the coast measured from low-water mark shall be deemed to be open sea within the territorial waters of Her Majesty's dominions." The three-mile limit became more and more generally recognized after the publication of Bynkershoek's "De Dominio Maris," 1702, in which he enunciates the principle that the territorial jurisdiction ends where the effective force of arms ends, which being approximately three miles from shore at that time, has since been usually accepted. Italy by decree of August 6, 1914, claimed a six-mile limit, while Norway withdrew its ancient claim to a four-mile limit on June 18, 1918.

Statement and origin of the principle.

(*b*) For special purposes a wider limit of jurisdiction is maintained and sometimes accepted by courtesy, though it is doubtful whether any state would attempt to hold its position

[1] Arts. 380–386. [2] Hershey, 215.
[3] See Regina *v.* Keyn, 2 L. R. (Exch. Div.), 63.

against a protest from another state. The claims are based on the jurisdiction over fisheries, the enforcement of revenue laws, the maintenance of neutrality, etc.[1] Such claims as the former English claims to the "King's Chambers," announced in 1604 to be bounded by a "straight line drawn from one point to another about the realm of England," as from the Lizard to Land's End, would not now receive serious support; and since the rejection of the claims of the United States by the Bering Sea Tribunal, it can be safely stated that the expansion of territorial jurisdiction upon the open sea will only come through the consensus of states. The desirability of some new regulations upon marine jurisdiction was well shown in the discussions of the Institute of International Law at its meeting in Paris in 1894 and later.[2]

A wider limit sometimes claimed for special purposes.

Within the three-mile limit the jurisdiction extends to commercial regulations, rules for pilotage and anchorage, sanitary and quarantine regulations, landing of cables, control of fisheries, revenue, general police, and in time of war to the enforcement of neutrality.

55. Jurisdiction over Fisheries

The existence of fisheries has given rise to some special claims to extension of maritime jurisdiction.

(*a*) As a general rule, the right of fishing on the high sea belongs to all states alike, but each must respect the rights of others. In order that these rights might be defined, it has in many cases been necessary to resort to conventions. One of the excellent examples of this may be seen in the convention in regard to the North Sea Fisheries, May 6, 1882, to which

Fishing on the high sea a right belonging to all states alike

[1] As between the United States and Mexico, their jurisdiction on the boundary line in the Gulf of Mexico extends three leagues.

[2] Annuaire XIII, 329; *ibid.*, XXVI, 403.

Belgium, Denmark, France, Germany, Great Britain, and Holland were parties. The cruisers of any of these states might present the case of the fishing vessel violating the regulations of the convention in the country to which the fishing vessel belonged, the trial and penalty belonging to the courts of that country.

(*b*) Special privileges granted by one state to another, or secured by custom, may be servitudes in the sense of limiting the right to exercise jurisdiction while not "derogating from sovereignty," and must depend, as in the case of the Canadian fisheries, upon the interpretation of the treaties by which they were granted.

Special privileges in fishing.

By the treaty of 1783, the United States has the right of fishing on certain parts of the coast of the British Dominion in North America. Great Britain claimed that these rights were annulled by the Treaty of Ghent, 1814, which put an end to the War of 1812, as that treaty was silent upon the subject. The United States declared, "they were not annulled by the war as they were enjoyed by the colonists before the separation from England in 1783, and so existed perpetually independent of treaty."

This claim was adjusted in the Treaty of 1818, by which inhabitants of the United States have liberty to fish on parts of the coast of Newfoundland and Labrador, to dry and cure fish in certain inlets, and to enter other inlets for shelter, repairs, and supplies. Disputes arising under this treaty were settled by the Treaty of 1854, which gave to Canadian fishermen certain rights of fishing along the eastern coast of the United States north of the thirty-sixth parallel of latitude.

Case of the Canadian fisheries.

The United States took action to terminate this treaty in accord with its terms in 1866. The conditions of the Treaty of 1818 revived.

The Treaty of Washington, 1871, practically reëstablishes the provisions of the Treaty of 1854, specifying that the difference

in value between the rights granted by each state to the other should be determined by a commission. This commission awarded $5,500,000 to Great Britain in 1877.[1] In accord with the provisions of the Treaty of 1871, it was terminated by the United States in 1886, the provisions of the Treaty of 1818 again coming in force. A law of March 3, 1897,[2] provided that the President may in certain contingencies deny vessels of the British Dominions of North America entry into the waters of the United States, and may also prohibit the importation of fish and other goods.[3]

These fisheries continued to be the subject of international negotiations, and *modi vivendi* were from time to time agreed upon between the United States and Great Britain, till at length under the provisions of the Arbitration Treaty of April 4, 1908, between the two states, the dispute was referred to the Hague tribunal, and an award was made September 7, 1910,[4] by which the respective rights were more clearly defined through action upon seven specific questions.

(*c*) Another question which had given rise to much discussion was that of the seal-fishing in Bering Sea.

The disputed question of seal-fishing in Bering Sea.

In 1821 Russia claimed that the Pacific north of latitude 51° was *mare clausum*. The United States and Great Britain denied this claim. By conventions, 1824 and 1825, Russia conceded to these nations rights of navigation, fishing, etc. After the United States in 1867 acquired Russian America, seal-fishing assumed importance. As the Canadian fishermen were not restrained by the laws binding the United States fishermen, it was feared that the seal would become extinct. In 1886, three Canadian schooners were by decree of the district court at Sitka confiscated for the violation of the laws of the United States in regard to seal-fishing, the judge charging the jury

[1] See Cushing's "Treaty of Washington." [2] 24 U. S. Sts. at Large, 475.
[3] 1 Moore, 767–874. [4] Wilson, "Hague Arbitration Cases," 134.

that the territorial waters of Alaska embraced the area bounded by the limits named in the treaty of cession to the United States of 1867 as those "within which the territories and dominion conveyed are contained." This act with others of similar character led to a formal protest by Great Britain.

The questions in dispute were referred to a court of arbitration which decided against the claims of the United States, denying that the sea referred to as the Bering Sea was *mare clausum*, and therefore denying that the United States acquired jurisdiction by prescriptive right from Russia in 1867. It was also decided that the United States had no right of property in the seals in the open sea, but that the destruction of these animals was contrary to the laws of nature. The United States and Great Britain entered into an agreement, in 1891, in regard to the protection and taking of the seals by their subjects. Other nations were also to be asked to become parties to an agreement.[1] A Convention Protecting Fur Seals was signed by the United States, Great Britain, Japan, and Russia, July 7, 1911.

It may be regarded as finally established that fishing in the open sea is free to all, though of course states may by conventions establish regulations which shall be binding upon their subjects.

56. Jurisdiction over Vessels

At the present time every vessel must be under the jurisdiction of some state.

(*a*) Vessels are divided into two general classes:

Public and private vessels.

(1) *Public vessels*, which include ships of war, government vessels engaged in public service, and vessels employed in the service of the state and in command of government officers.

[1] Proceedings Fur Seal Arbitration, 1893; also 8 U. S. Comp. Sts. §§ 8838 *et seq.*

(2) *Private vessels*, owned and operated by individuals and under regulations varying in different states.

(*b*) The nationality of a public vessel is determined by its flag. In an extreme case the word of the commander is held to be sufficient proof.

Nationality of a vessel determined by its flag or papers.

In case of a private vessel the flag is customary evidence, but in case of doubt the vessel must show to proper authorities the papers which certify its nationality.

(*c*) The general exercise of jurisdiction over vessels presents four different aspects as follows:

General exercise of jurisdiction.

(1) Upon the high seas and *within its own waters* the jurisdiction of a state over its public and private vessels is exclusive for all cases.

(2) Over *public vessels in foreign waters*, the jurisdiction of the state to which a public vessel belongs is exclusive for all matters of internal economy. The vessels are subject to port regulations in matters of anchorage, public safety, etc. As Dana says in his note to Wheaton: "It may be considered as established law, now, that the public vessels of a foreign state coming within the jurisdiction of a friendly state, are exempt from all forms of process in private suits." [1] In general practice the waters of all states are open to the vessels of war of all other states with which they are at peace. This is a matter of courtesy and not of right, and is in fact sometimes denied, as by the provision of the Treaty of Berlin, 1878: "The port of Antivari and all the waters of Montenegro shall remain closed to the ships of war of all nations." [2] Various regulations may require, without offense, notice of arrival, probable duration of stay, rank of commander, etc., and in time of war special regulations may be established.

The boats, rafts, etc., attached to a vessel of war and while engaged in the public service are regarded as a part of the ship.

[1] Note 63, § 105.

[2] IV Hertslet, 2783.

Extent of immunities.

While there is some difference of opinion as to the immunities of the persons belonging to a ship of war in a foreign harbor, a generally admitted rule seems to be that while the persons of a ship of war are engaged in any public service that is not prohibited by the local authorities, such persons are exempt from local jurisdiction. The ship's crew would not be arrested and detained by local authorities for minor breaches of local regulations, though they might be sent on board their vessel with statement of reasons for such action. If the action of the crew constitutes a violation of the law of the country to which they belong, the commander of the ship may punish them, and report his action to the local authorities. In case of crimes of serious nature the commander may turn the offenders over to the local authorities, but must assure them a fair trial. The commander of a vessel is, of course, always responsible to his home government, and his action may become the subject of diplomatic negotiations.

The right of asylum on board a ship of war.

The question of right of asylum on board a ship of war has been much discussed. *First*, most civilized states now afford asylum on board their ships of war to those who, in the less civilized regions, flee from slavery.[1] *Second*, in cases of revolution ships of war sometimes afford refuge to members of the defeated party, though the ship of war may not be used as a safe point from which further hostilities may be undertaken. *Third*, a commander may afford asylum to political refugees under circumstances which he thinks advisable. *Fourth*, in cases where asylum is granted to offenders whether political, or (in case of treaty right) criminal, if the request of the local authorities for the release of the criminal is refused by the commander of the ship, there is no recourse except to the diplomatic channels through extradition.

[1] Art. 28, Gen. Act Brussels Conference, July 2, 1890.

The immunities granted to vessels of war are also generally conceded to other vessels strictly upon public service, *e.g.* carrying an ambassador to his post. The largest possible exemption is given to a vessel conveying the sovereign of a state. Vessels transporting military forces in command of regularly commissioned government officers are usually granted immunities accorded to men-of-war.

Immunities of vessels in public service.

(3) Over *private vessels in foreign waters* the amount of jurisdiction claimed by different states varies. The principle which is meeting with growing favor, as shown by practice and by treaty stipulation, was stated by Chief Justice Waite in 1886 as follows: "Disorders which disturb only the peace of the ship, or those on board, are to be dealt with exclusively by the sovereignty of the home of the ship; but those which disturb the public peace may be suppressed, and, if need be, the offenders punished by the proper authorities of the local jurisdiction." [1]

Varying jurisdiction over private vessels in foreign waters.

The position of France is, briefly, to assume no jurisdiction over foreign merchantmen within her ports save in cases that affect some person other than those belonging to the ship, in which cases the local authorities are expressly called upon to interfere, or, when the order of the port is disturbed.[2]

The British Territorial Waters Jurisdiction Act of August 28, 1878, gives jurisdiction to the authorities over all acts committed within the marine league, even though the ships are not anchored but merely passing through territorial waters.[3] This is an extreme position, and not supported by the best authorities even in Great Britain.[4]

The position of France, as stated above, is open to little

[1] Wildenhus's Case, 120 U. S. 1, 18.
[2] Bonfils, "De la compétence des tribunaux français," § 326.
[3] Statutes 41 and 42, Vict., p. 579.
[4] Holland, "Studies," p. 156; Perels, p. 112.

objection either in practice or theory, and is more and more becoming a form of treaty agreement, and may be considered generally approved. Where these principles are adopted the jurisdiction of breaches of order within the ship may be referred to the consul who has jurisdiction, and if necessary he may call upon the local officers to assist him in enforcing his authority.

(4) In recent years special exemption from jurisdiction has been accorded to certain *semi-public* vessels engaged particularly in the postal and scientific service. Vessels in the postal service have by treaties been accorded special freedom from customs and port regulations; and by the Convention between Great Britain and France, August 30, 1890 (Art. 9), it is agreed that in time of war such vessels shall be free from molestation till one of the states shall give formal notice that communication is at an end. During the World War immunity to vessels in the postal service was not uniformly accorded.

Special exemption of semi-public vessels.

57. Aerial Jurisdiction

With the development of radio communication and with the use of the atmosphere as a highway for aircraft, balloons, etc., there have arisen questions in regard to aerial jurisdiction. It is generally recognized that the state possessing territorial, maritime, and fluvial jurisdiction has jurisdiction in the atmosphere above. States began to regulate the use of the wireless telegraph by the Convention of Berlin, November 3, 1906. This Convention was superseded by that of London, July 5, 1912.

In a preliminary statement, the Institute of International Law in 1906 declared that "The air is free. States have over it, in time of peace and in time of war, only the rights necessary for preservation."

The idea expressed in "freedom of the air" gradually gave way to the idea that jurisdiction in the air appertained to the

subjacent state.[1] The Convention relating to international air navigation drawn by a sub-committee of the Peace Conference, 1919, states: "Article I. The contracting States recognize that every State has complete and exclusive sovereignty in the air space above its territory and territorial waters." The manner of the exercise of jurisdiction when not determined by conventional agreements was left for each state to decide. As a state might prohibit photographing of fortifications from ships upon the water, so it might prohibit similar acts from aircraft. During the World War both neutrals and belligerents assumed exclusive jurisdiction over the superjacent air.

58. Jurisdiction over Persons — Nationality

Under the discussion of jurisdiction of the state over persons comes the question of nationality.[2] Nationality involves the reciprocal relations of allegiance and protection on the part of the person and state. It corresponds to citizenship in the broad sense of that term. In general a state may exercise jurisdiction over its own subjects or citizens as it will, and the relations of a state to its citizens are matters of municipal law only.

Persons who owe allegiance to a state and are entitled to its protection are in some recent treaties called *nationals* of that state. The term national implies merely that the person so designated has this international status, but does not imply anything in regard to the degree of political or other privileges to which the person is entitled, as in the case of Porto Ricans under the Act of April 12, 1900.

A state exercises jurisdiction over all persons within its limits except certain officers of other states by exterritoriality entitled to exemption from local jurisdiction. In some of the Eastern states citizens of Western states are by treaty ex-

[1] Hazeltine, "The Law of the Air"; Spaight, "Aircraft in Peace," "Aircraft in War"; Wilson, "Aerial Jurisdiction," 5 Am. Pol. Sci. Rev. p. 171.

[2] 1 Zeballos, "La Nationalité," p. 139.

empt from certain local laws. This last exemption may properly be said to be by local law, as a treaty becomes a part of the state law for the subjects upon which it touches.

The jurisdiction over a person also varies with the status of the person as regards his relations to other states, as in case of an ambassador in transit to his post in a third state. The conflict of laws in regard to nationality forms an important part of *private international law*.

59. Jurisdiction over Natural-born Subjects

Children born within a state of which the parents are citizens are natural-born subjects of that state. Such persons are fully under the local jurisdiction.

Foundlings, because of the uncertainty of parentage, are considered subjects of the state in which they are found.

Illegitimate children take the nationality of the mother, provided they are born in the state of which the mother is subject and sometimes even when born abroad.[1]

The great bulk of the population of all states, except those most recently founded, is natural-born, and therefore fully under local jurisdiction.

60. Jurisdiction over Foreign-born Subjects

It is the general principle that each state determines citizenship by its own laws. The status of persons born abroad may become very uncertain by virtue of the conflict of laws of the state of which one or both the parents are citizens and of the state in which the child is born.

These laws in regard to children born to parents while sojourning in foreign countries may be classified as follows: —

(*a*) The child born in the foreign country is a subject of the state of which his parents are citizens. That the child

[1] Portuguese Civil Code, Art. 18, Sec. 3.

inherits the nationality of his father is a common maxim known as *jus sanguinis*. The United States law says: "All children heretofore born or hereafter born out of the limits and jurisdiction of the United States, whose fathers were or may be at the time of their birth citizens thereof, are declared to be citizens of the United States; but the rights of citizenship shall not descend to children whose fathers never resided in the United States." [1] The *jus sanguinis* was followed by Austria,[2] Germany,[3] Hungary,[4] Sweden,[5] Switzerland,[6] and by some of the smaller European states.

The rule of jus sanguinis.

(*b*) Certain states follow the rule of *jus soli*, maintaining that the place of birth determines the nationality. Great Britain, by Article 4 of the Act of May 12, 1870, adopts this principle. By the Fourteenth Amendment of the Constitution of the United States, "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside." The laws of the United States have given rise to many questions.[7] Portugal and most of the South American states follow the *jus soli*.

The rule of jus soli.

(*c*) Other states follow sometimes the *jus sanguinis*, sometimes *jus soli*, and sometimes modifications of these laws. The laws of Belgium and Spain regard the child of an alien as an alien, though on attaining majority the child may choose the citizenship of the country of his birth. The French laws of June 26–28, 1889, and July 22, 1893, consider as subjects the children born abroad to French citizens, also the children of foreigners born in France, unless these children within one year after attaining majority elect the nationality of their parents. Most states allow the descendants

Variations in laws.

[1] U. S. Rev. Sts., § 1993; 4 U. S. Comp. Sts. §§ 3947 *et seq.*
[2] Civil Code, Art. 28.
[3] Law of June 1, 1870 and revisions.
[4] Dec. 24, 1879.
[5] Feb. 27, 1858 and revisions.
[6] July 3, 1876.
[7] 3 Moore, § 425.

born to foreigners sojourning within their limits to elect their allegiance on attaining majority. Switzerland, however, strongly maintains the *jus sanguinis*, without according any choice to the descendants born to foreigners within her limits, or to her own subjects born abroad except by formal renunciation of citizenship. Thus the child of a citizen of Switzerland born in France would be by French law a citizen of France, and by Swiss law a citizen of Switzerland.

By the law of Germany, 1870, a citizen of Germany sojourning more than ten years abroad without registration at his consulate loses his German citizenship, without necessarily acquiring the citizenship of the country of his sojourn, thereby becoming *heimatlos*, or a "man without a country." But the Imperial and State Citizenship Law of July 22, 1913, made provision for naturalization.[1] This law provided for a possible dual citizenship. "Citizenship is not lost by one who before acquiring foreign citizenship has secured on application the written consent of the competent authorities of his home state to retain his citizenship." (Section 25.)

At the present time the laws in regard to descendants born to parents sojourning in a foreign state show the widest diversity and give rise to unfortunate complications.[2]

61. Jurisdiction by Virtue of Acquired Nationality

The jurisdiction of a state extends to those who voluntarily acquire its citizenship.[3]

(*a*) A woman in most states by marriage acquires the nationality of her husband. In some of the South American states the husband acquires the citizenship of his wife. By the law of Belgium, August 6, 1881, and by the law of France, June 26, 1889, it was made easier for

By marriage.

[1] Ex parte Weber, (1915) 31 L. T. Rep. 602.

[2] Pradier-Fodéré, 1648–1653; Van Dyne, "Citizenship of the United States."

[3] Van Dyne, "Law of Naturalization of the United States."

foreigners who had married women natives of those states to acquire Belgian or French nationality respectively. The United States law holds that a woman "who might herself be lawfully naturalized" marrying a citizen of the United States acquires in this manner his nationality. An American woman on marrying a foreigner takes his nationality, but on termination of marital relations, she may regain American nationality by registering within one year before a United States consul or by residence within the United States.[1]

(*b*) A state may acquire jurisdiction over persons by naturalization, which is an act of sovereignty by which a foreigner is admitted to citizenship in another state. The method of naturalization is in accord with local law and varies greatly in different states.[2] The law of the United States prescribes that Congress has power "to establish an uniform rule of naturalization."[3] The foreigner being a free white or African desiring naturalization in the United States must declare on oath before a court "two years, at least, prior to his admission, and after he has reached the age of eighteen years," his intent to become a citizen. After completion of five years of residence and within seven years of the first declaration, he may obtain citizenship by taking an oath of allegiance to the United States and of renunciation of his former country. Military or naval service, service in the merchant marine, or certain other prior conditions may facilitate naturalization or shorten its period.[4]

By naturalization.

(*c*) A state may acquire jurisdiction over persons by annexation of the territory upon which they reside. The territory may be acquired by cession, exchange, purchase, conquest, etc. The conditions of the transfer of allegiance from the state

[1] U. S. Comp. Sts. §§ 3948, 3960.

[2] Pradier-Fodéré, 1656 ff.; U. S. Sts. 1905–6, Pt. I, 596, Act June 29, 1906; 1 A. J. I. L. Doc., p. 31.

[3] Constitution of U. S., Art. I, § 8; U. S. Comp. Stat. 1918, § 4358.

[4] 5 U. S. Comp. Stat. §§ 4352, 4365.

formerly possessing the territory is usually fixed by the treaty. This transfer is known as collective naturalization.

By annexation of territory. Ordinarily a right to choose the allegiance to either state is left to the inhabitants of an annexed territory. Removal from the new jurisdiction is usually required if the inhabitant does not choose to change his allegiance. If the inhabitant does not take any action, it is held that he thereby tacitly transfers his allegiance unless there are special treaty provisions.[1] In default of declaration to the contrary within one year acceptance of citizenship in the United States was presumed by inhabitants of the Danish West Indies, purchased in 1917.

(*d*) The effect of naturalization, whatever the method, is to make the person a citizen of the state into which he is admitted, and over him that state has jurisdiction in all places outside the jurisdiction of the state whose allegiance he has forsworn.

The effect of naturalization.

There may be conflict in the laws determining the relations to his native state of a person who has renounced his allegiance to one state by naturalization in another state. The general law is, that he becomes entitled to all the privileges of a subject of the state of his new allegiance, except that when he is within the state of his former allegiance he becomes liable for the performance of any obligation which he may have incurred prior to his naturalization.[2]

A state may determine what conditions must be fulfilled in order to constitute a valid severance of allegiance. Laws are diverse upon this subject. Many states have maintained, and some still maintain, that allegiance is inalienable.[3] England formally maintained this principle till 1870, and her attempts

[1] 2 Pradier-Fodéré, 863; 3 *ibid.*, 1671 ff.

[2] 3 Moore, § 401; See Convention of 1906 establishing status of naturalized citizens.

[3] Hall, p. 239.

to enforce the principle brought on the War of 1812 with the United States.

In certain countries, as in the United States and Switzerland, minor children are held to follow the allegiance of their father in case of naturalization. The French law claims that the minor child's nationality is that of his birthplace. The subject has been determined in some instances by treaty stipulation, yet must be considered, like many questions of naturalization, as unsettled.

Many states distinguish in law and more in practice between that naturalization which carries with it protection of the state and allegiance of the subject (*naturalisation ordinaire*) and the naturalization which carries full political privileges (*grande naturalisation*).

(*e*) The fact that a person has taken the preliminary steps toward acquiring the nationality of a foreign state, by making a declaration of his intention or otherwise, may give the state to which the person has assumed an inchoate allegiance the right of protection of the declarant against third states,[1] though not necessarily against the native state of the declarant.[2]

Incomplete naturalization.

The United States, in the case of Martin Koszta in 1853, took an extreme position in its claim of protection of one who had only declared his intention to become a citizen.[3]

By an act of March 3, 1863, the United States declared that those who had taken the preliminary oath of intention to become citizens were liable to military service. Upon protest by foreign nations against this act of Congress, the President, by proclamation, announced that, as it had been claimed that "such persons, under treaties or the law of nations, retain a right to renounce that purpose, and to forego the privileges of citizenship and residence within the United States, under the

Citizenship and liability to military service.

[1] 3 Moore, § 387. [2] 3 Moore, § 491. [3] 3 Moore, §§ 490, 491.

obligations imposed by the aforesaid act of Congress," [1] to avoid all misapprehension, the plea of alienage would be accepted for sixty-five days, during which time such persons as had only declared their intention to become citizens might depart.

In the Acts of 1918 the United States provided that neutrals who had declared their intention to become citizens might be relieved of obligation to military service by withdrawing the declaration of intention and they would thereupon be debarred from becoming citizens of the United States.[2]

Municipal laws and naturalization.

The municipal laws of some of the local states of the United States admit to all political privileges of the local state those who have taken the first steps toward naturalization. It is generally conceded that such as have exercised the privileges of full citizens can properly be held to the obligations of full citizens, as was implied in 1863 and 1918.

As is shown in the international convention of 1906, the inconsistencies in regard to jurisdiction over those naturalized are gradually being removed by treaty provisions which determine the position of such persons.[3]

62. Jurisdiction over Aliens

Citizens of one state, when sojourning in a foreign state, have a dual relationship by which they may claim certain privileges, both from their native state and from the foreign state.

(*a*) The native state naturally has jurisdiction of a qualified sort over its subjects even when they are in a foreign state.

(1) The right to make *emigration laws* may lead to lawful restrictions on the movements of nationals. A state may banish its subjects. No other state is obliged to receive them, however.

[1] 6 Messages and Papers of Presidents, 168.

[2] Acts of Congress, July 9 and August 31, 1918.

[3] Convention United States and Portugal, May 7, 1908, Art. 2.

(2) A state may *recall its citizens for special reasons*, as in the case of Greece in 1897, when Greek citizens were recalled for military service, and as was frequently done by many states from 1914.

Qualified jurisdiction over subjects abroad.

(3) There is much difference of opinion upon the question of *criminal jurisdiction* of the native state over its subjects who have committed crimes in a foreign state. In general American and English authorities agree that criminal law is territorial. Some of the continental authorities take the view that a citizen on his return may be punished for crimes committed in a foreign state. The English law takes this position in certain crimes, as treason, bigamy, and premeditated murder. Usually a crime committed upon a vessel in a foreign harbor is held as within the jurisdiction of the state of the vessel's registry.[1]

(4) A state may interfere to *protect its subjects* in a foreign state, thus extending its authority in their behalf. This has been frequently done to protect Western sojourners in Eastern states, *e.g.* the demands of Germany, in 1898, for concessions from China on account of injuries to missionaries. These demands, accompanied by a naval demonstration, resulted in the cession of Kiaochow, which remained in German control till the World War.

(*b*) The jurisdiction of a state over aliens within its territory is very extensive.

Jurisdiction over aliens within territory.

(1) The absolute right of *exclusion* of all foreigners would hardly be maintained by any civilized state, though it could be deduced from the doctrine of sovereignty. Several Asiatic states desirous of excluding foreigners were, however, compelled by force to grant to certain states demanding it admission for their citizens.

(2) The right of *expulsion* is, however, generally maintained.

[1] Wildenhus' case, 120 U. S. 1.

This right should, however, be exercised most carefully, as the fact of admission carries with it some obligation on the part of the admitting state.

(3) The right to *conditional admission* is generally admitted, as seen in laws in regard to immigration.

(4) The foreign state may impose such restrictions upon *settlement* as it sees fit.

(5) A foreign state may *levy* such *taxes* upon the person and goods of aliens as are in accord with state law.

(6) Aliens are subject to the local *sanitary and police jurisdiction.*

(7) The foreign state has *criminal jurisdiction* over aliens for crimes committed within territorial limits, and many states maintain, also, for such crimes as plotting against the state, counterfeiting state money, or crimes directly imperiling the state's well-being even when committed outside of state limits.

(8) The state may require aliens to render service such as is necessary to *maintain public order,* even military service, to ward off immediate and sudden danger, *e.g.* as an attack by savages, a mob, etc., but

(9) A state cannot compel aliens to enter its *military service for* the securing of *political ends,* or for the general ends of war.

(10) In nearly all states *freedom of commerce* is now conceded, the state giving to native and foreigner similar privileges.

(11) The *holding and bequeathing of property* of whatever sort is subject to local law, as is also

(12) The *freedom of speech and of worship.*

All these laws are subject to the exemptions in favor of sovereigns, diplomatic agents, etc.

Passport a means for establishing the identity of an alien.

(*c*) Ordinarily the identity of an alien is established by a passport. This may also secure for him a measure of care in a foreign state. Opposite is the ordinary form of passport issued by the United States before the outbreak of war in 1914.

Good only for two years from date.

UNITED STATES OF AMERICA

DEPARTMENT OF STATE

To all to whom these presents shall come, Greeting:

I, the undersigned, Secretary of State of the United States of America, hereby request all whom it may concern to permit

DESCRIPTION

Age.....Years .....
Stature....Feet...Inches.., Eng. .....,
Forehead ..... a Citizen of the United States,
Eyes ....safely
Nose..... and freely to pass, and in case of need to give.....all lawful Aid and Protection.
Mouth.....
Chin.....
Hair.....
Complexion.....
Face .....

Given under my hand and the Seal of the Department of State, at the City of Washington, the .....day of.....in the year 19.., and of the Independence of the United States the one hundred and.....

(SEAL)

(Signature of the Bearer)

.....

No..... .....

63. Exemptions from Jurisdiction — General

As a general principle, the sovereignty of a state within its boundaries is complete and exclusive. For various reasons there has grown up the custom of granting immunity from local jurisdiction to certain persons generally representing the public authority of a friendly state. This immunity may extend to those persons and things under their control.

This immunity has been called extraterritoriality. The persons and things thus exempt from local jurisdiction are regarded as carrying with them the territorial status of their native state, or as being for purposes of jurisdiction within

their own state territory, and beyond that of the state in which they are geographically. Wherever they may go they carry with them the territory and jurisdiction of their home state. Doubtless this doctrine of extra-territoriality in the extreme form may be carried too far, as many late writers contend, and some have desired another term, as immunity from jurisdiction, as more exact and correct.[1] Such a term would have the merit of directing attention to the nature of the relation which the persons concerned sustain to the state. Hall sums up the case by saying, "If exterritoriality is taken, not merely as a rough way of describing the effect of certain immunities, but as a principle of law, it becomes, or at any rate is ready to become, an independent source of legal rule, displacing the principle of the exclusiveness of territorial sovereignty within the range of its possible operation in all cases in which practice is unsettled or contested."[2] Extra-territoriality should be viewed as based on the immunities conceded to public persons, rather than as the source of these immunities.

Extraterritoriality.

64. Exemption of Sovereigns

Sovereigns sojourning in their official capacity in foreign countries are exempt from local jurisdiction. This principle is based, not merely upon courtesy, but also upon convenience and necessity. The sovereign represents the state, and therefore cannot be subjected to the jurisdiction of another state without waiving the sovereignty, and in so far depriving the state of one of its essential attributes. Nor can the visiting sovereign exercise any authority which would infringe the sovereign powers of the state in which he is. The visiting sovereign can only claim immunity for such action as is in accord with the necessities of his convenient sojourn. He, his retinue, and effects, are exempt from civil and criminal jurisdiction. He

[1] Bonfils, No. 337.

[2] Hall, p. 177.

is free from taxes, duties, police and administrative regulations. In the case of Vavasseur *v.* Krupp, 1878, it was decided that infringement of the patent law did not constitute a ground for suit against a sovereign. In this case, Vavasseur brought action against Krupp for infringement of patent on shells in custody of the agents of the Mikado of Japan. The action resulted in an injunction preventing removal of the shells to the Mikado's ships, but on application of the Mikado to remove the shells as his property, the court held that, even if the property in question infringed a patent, the Mikado could not be sued and his property could not be held.[1] The principle that the sovereign is free from suit has frequently been decided by the courts of various countries. A sovereign sojourning in a foreign state cannot, however, set up his courts and execute judgment; such functions belong to his territorial courts. Criminals in his retinue must be sent home for trial. While the sovereign's *hôtel* or place of residence while abroad is exempt from local jurisdiction, the sovereign is not justified in allowing the *hôtel* to become an asylum for others than members of his retinue. On demand he must give up such refugees. In case the sovereign does not observe this principle or commits acts liable to endanger the peace of the foreign state, the authorities may invite him to depart, or if necessary expel him by force, in which case the measures taken should cause the least possible inconvenience to the sovereign.

The sovereign may, in his private capacity, hold property and become party to a suit like any citizen.[2] A sovereign may travel *incognito*, and is then entitled only to the recognition accorded to the rank which he assumes. He can, however, assert his sovereign capacity and obtain its immunities at any time should he deem it proper.

[1] L. R. 9 Ch. Div. 351.

[2] Strousberg *v.* Costa Rica, (1881) L. T. 199; Bynkershoek, "De Foro Legatorum," Ch. XVI.

65. Exemptions of State Officers

(*a*) Diplomatic agents, or those commissioned to transact the political affairs of the state abroad, are conceded a wide immunity from local jurisdiction. As representing the political will of their state, diplomatic agents have immunities similar to those conceded to the sovereign, though by virtue of the fact that the sending of diplomatic agents has long been a common practice, their immunities are quite well defined. These immunities will be considered more in detail under the subject of International Intercourse, but in general a diplomatic agent is exempt from (1) criminal jurisdiction, (2) civil jurisdiction, (3) local police and administrative regulations, (4) taxes and duties, (5) jury and witness duty, (6) regulations in regard to religious and social action, (7) all exercise of authority by the local state within his official residence or *hôtel*, (8) and is exempt from the exercise of similar authority over his household, official and unofficial.[1]

Wide immunity allowed diplomatic agents.

(*b*) The exemptions granted to consuls vary in different states and under different circumstances. In general consuls are entitled to such exemptions as will enable them to perform their functions effectively.[2]

Exemptions granted to consuls.

(*c*) Any foreign army within the territorial limits of a given state, by permission of the sovereign of said state, is free from the sovereign's jurisdiction. Chief Justice Marshall, in 1812, gave as his opinion: "In such case, without any express declaration waiving jurisdiction over the army to which this right of passage has been granted, the sovereign who should attempt to exercise it would certainly be considered as violating his faith. . . . The grant of a free passage, therefore, implies

A foreign army entering a state by permission, free from jurisdiction.

[1] See Sec. 78 for full discussion.

[2] See Sec. 82 (*f*) for full discussion.

a waiver of all jurisdiction over the troops during their passage, and permits the foreign general to use that discipline, and to inflict those punishments, which the government of his army may require." [1] Permission, either general or special, must be obtained in order that an army may enter a foreign state in time of peace. The army must cause the least possible inconvenience to the state during its sojourn.

The military attaché of an embassy is regarded as a member of the official household of the diplomatic agent.

(*d*) As a vessel of war can without inconvenience to a foreign state pass through or remain within its maritime jurisdiction, it is customary to accord to the vessel and crew immunity from local jurisdiction and freedom of passage unless withheld for special reason. "Their immunity from local jurisdiction has come to be more absolute than that of the official residence of ambassadors, and probably for the reason that they have the efficient means of resistance which an ambassador has not." [2]

A vessel of war in a foreign state free from local jurisdiction.

In general the exemption from local jurisdiction which a vessel of war enjoys in a foreign state extends: (1) to acts beginning and ending on board the vessel; [3] (2) to all boats, etc., of the vessel of war in charge of the crew of the vessel and upon its service; (3) to freedom from customs and all such regulations as are not necessary for the safety of the port. It was held in case of the United States frigate *Constitution*, in 1879, that she was not liable to salvage charges.[4] A vessel of war is liable to quarantine, anchorage, and to other rules which imply no derogation of sovereignty; (4) to all persons on board the vessel whether members of the crew or others. This exemption should not be taken as warranting a general exercise of the

[1] Exchange *v.* M'Faddon, 7 Cr., 116, 139.
[2] "International Law," Naval War Col., 2d ed. p. 23.
[3] Hall, p. 204.
[4] (1879) L. R. 4 P. D. 39.

right of asylum on board vessels of war. Asylum may be granted as an act of hospitality to a political refugee, who should not use the vessel as a base for political intrigue. Asylum to common criminals cannot be granted without offense to the foreign state. Such criminals are usually surrendered on request of the local authorities.

A commander may not pursue deserters on shore or exercise external authority.

Hall sums up the general principle as follows: "The immunities of a vessel of war belong to her as a complete instrument, made up of vessel and crew, and intended to be used by the state for specific purposes; the elements of which she is composed are not capable of separate use for those purposes; they consequently are not exempted from the local jurisdiction." [1]

In case of abuse of exemptions the state in whose waters the foreign ship of war is, can request it to depart; and if its request is not complied with, can use force, though the customary method is to resort to diplomatic channels.

66. Special Exemptions

(*a*) In certain Oriental states, the subjects of Western states are by treaty exempt from local jurisdiction. The extent of the exemption in each case depends upon the treaty provisions. The basis of this exemption is found in the "incompatibility of habits of thought on all legal and moral questions," [2] and the consequent impossibility of obtaining what to the Western states seems just treatment on the part of Oriental officials. Consular courts were established to meet the needs of foreigners within the jurisdiction of these Eastern

In certain Oriental states special exemptions regulated by treaty

[1] Hall, p. 207.

[2] 2 Moore, § 262.

states.[1] The consuls in these states were invested with special judicial powers, though not considered by the laws of the United States judicial officers. Each state determines the competence of its consular courts in foreign states.

The following rules are general, though not absolute, propositions in regard to the treatment of cases involving natives of Eastern countries and foreigners.

(1) *Criminal Matters.* If a native commits a crime against a foreigner, he is generally tried in the local court.

If a foreigner commits a crime against a native, he is generally tried in the consular court of his state.

If a foreigner commits a crime against a foreigner of another nationality, he is generally tried in the consular court of the injured foreigner.

If both parties to the crime are of the same nationality, the offenders are tried in the court of their own state.

If the crime is a grave one, such as murder, sentence cannot be passed without the sanction of the home government, and in some cases the offender is sent home for trial.

(2) *Civil Matters.* In cases involving a foreigner and a native, the trial is generally by agents of the two countries.

In cases involving subjects of the same state, their consular court has jurisdiction.

In cases involving foreigners of different nationalities the consular court of the defendant has jurisdiction.

In cases involving large interests, there is an appeal from the consular to the higher courts of the state.

In the East registration of the head of the family at the consulate is necessary to obtain consular protection. Local statutes

[1] By treaties with Japan, going into effect 1899, such courts were abolished in that empire. 29 U. S. Sts. at Large, 848. By an Act of Congress of June 30, 1906, the United States established "the United States Court for China," which takes over for the more important cases the jurisdiction formerly exercised by consuls and ministers. The conference on Limitation of Armament, 1922, adopted a resolution looking to the abolition of extraterritorial courts in China.

provide for the execution of treaty stipulations as to consular jurisdiction.[1]

(*b*) In Egypt mixed courts were instituted in 1875. This system, arranged by convention, received the assent of nearly all the European states and of the United States.[2] The majority of the judges in these courts were foreigners, and the courts had competence over cases against the Egyptian government, over civil and commercial matters between foreigners and natives, and between foreigners of different nationalities. The consuls had jurisdiction in other matters. These courts have been the subject of much discussion and great difference of opinion.

Mixed courts in Egypt.

67. Extradition

Extradition is the act by which one state delivers a person accused of crime committed beyond its borders to another state for trial and punishment.

Many of the Continental states maintain that extradition is a duty binding upon all civilized states, on the ground that the prevention of crime which would result from certainty of punishment is an object to be sought by all for the general good. Grotius, Vattel, Kent, Fiore, and many other authorities maintain this position. Bluntschli, Foelix, Klüber, G. F. de Martens, Pufendorf, Phillimore, Wheaton, and the majority of authorities make the basis of extradition the conventional agreement of treaties.[3] The large number of extradition treaties of the last half of the nineteenth century has made the practice general. Occasionally a state has, in the absence of treaties, voluntarily surrendered fugitives from justice as an act of

[1] 7 U. S. Comp. Sts. §§ 7633 *et seq.*

[2] Proclamation of March 27, 1876; 19 U. S. Sts. at Large, 662.

[3] "The surrender of fugitives from justice is a matter of conventional arrangement between states, as no such obligation is imposed by the law of nations." In the Matter of Metzger, 5 How. 176.

courtesy. The extradition of Tweed by Spain in 1876 was an act of this kind.[1] Such cases are not common, however, and it is safe to derive the principles from the general practice as seen in treaties.

(*a*) Persons liable to extradition vary according to treaties. It is the general practice to surrender on demand of the state in which the crime is committed only those who are subjects of the state making the demand. This is the general rule of the Continental states. As Great Britain and the United States maintain the principles of territorial penal jurisdiction, it is customary for these states to uphold the idea of extradition even of their own subjects.[2] The practice is not uniform in the relations of these states to other states, as is shown in their treaties. The South American and Continental European states hold that their own citizens are not liable to extradition.

Persons liable to extradition.

A large number of the modern writers are in favor of the extradition of subjects in the same manner as aliens, and some recent treaties grant no special protection to a subject who has sought refuge in his native state after committing a crime abroad.

In case the accused whose extradition is demanded is a citizen of a third state, the practice is not uniform, though the best authorities seem to favor the granting of the extradition only after communication with and assent of the third state, on the ground that the state to which the subject has fled is responsible to the third state for its treatment of him. This practice has been followed in many European treaties.

Ordinarily, not all criminals are liable to extradition, though treaty stipulations may cover cases usually excepted. Those accused of political crimes have, since the early part of the nineteenth century, been more and more generally exempt

[1] 4 Moore, §§ 580–588.

[2] Moore, "Extradition," 156; Charlton *v.* Kelly, 229 U. S. 447.

from extradition.[1] During the last quarter of the nineteenth century few treaties have been made which do not make political criminals specifically non-extraditable. Political crimes accompanied by attacks upon the person of the sovereign or of those holding political office or position are not, however, in the above category, but are usually extraditable.

(*b*) Even when an accused person is extradited there are limitations as to the jurisdiction of the state to which he goes. The trial must be for the offense or offenses enumerated in the treaty. For example, a treaty between two states enumerates among extraditable crimes murder, and does not enumerate larceny. A fugitive from one of the countries is accused of both murder and larceny. The country surrendering the criminal would not permit the trial of the criminal for any other crime than murder, until the criminal should have had opportunity to return to the state from which he was surrendered.

Limitations as to jurisdiction over a person extradited.

(*c*) The conditions necessary for a claim for extradition are: (1) that the crime shall have been committed within the jurisdiction of the state making the demand, (2) that there be sufficient evidence of guilt to establish a case, and (3) that the application be from the proper authority and in the proper form.[2]

Conditions necessary for extradition.

(*d*) The procedure in cases of extradition is based on definite principles. As it is an act of sovereignty, it must be performed by agents of the sovereign person, who for this purpose, although generally engaged in other functions, are executive officers.[3] The general rule is that the demand for extradition shall be made through the

[1] In Re Castioni, 1 L. R., Q. B. [1891], 149.

[2] 26 U. S. Sts. at Large, 1510; 10 U. S. Comp. Sts. §§ 10, 110 *et seq.*

[3] In case of Chesapeake, 1863, the consul acted as agent. Wheat. D., § 428, note 207; 3 Pradier-Fodéré, 1876.

ordinary diplomatic channels. In colonies and under special circumstances an officer of first rank may be the medium of the demand.

Procedure in cases of extradition.

The person demanded may be placed under provisional arrest pending the full proceedings of extradition.[1]

Reasonable evidence of the identity of the person and of the facts of the crime must be furnished by the state making the demand.

In case a person is demanded by two or more states it is becoming customary to accede to the demand first received.

In many recent treaties there is provision that if the person demanded is accused of a crime in the state of refuge, the demand for his extradition may be refused pending his trial in the state of refuge.

68. Servitudes

Servitudes in international law constitute a restriction upon the exercise of the territorial jurisdiction of a state. This may be in favor of or by agreement with one or more states. The existence of a servitude does not necessarily imply a partition or an alienation of sovereignty. The North Atlantic Coast Fisheries Tribunal in 1910, while maintaining the American right to fish and certain exemptions from British jurisdiction, was unable to agree with the contention of the United States that "the liberties of fisheries granted to the United States constitute an international servitude" "involving a derogation from the sovereignty of Great Britain." [2]

(*a*) International servitudes are: —

(1) *positive*, implying that a state is under obligation to permit within its territory another state to exercise certain powers, as by the Treaty of Berlin, 1878, Art. XXIX, "The

[1] 3 Pradier-Fodéré, 1877.

[2] Wilson, Hague Arbitration Cases, p. 158.

administration of the maritime and sanitary police, both at Antivari and along the coast of Montenegro, shall be carried out by Austria-Hungary by means of light coast-guard vessels "[1];

International servitudes, positive and negative.

(2) *negative*, implying that a state is to refrain from certain acts, otherwise customary, as "Montenegro shall neither have ships of war nor flag of war."[2]

Among the *positive servitudes* are: those obligations of a state to allow within its own jurisdiction the exercise of political or administrative authority by another state, as in the execution of judicial or police regulations; those obligations to allow the exercise of military authority, as in military occupation of a portion of the territory or the passage of troops. Among the *negative servitudes* are: those obligations of a state to refrain from exercising within its own jurisdiction certain political or administrative authority which might be exercised, if the servitude did not exist, as in the exemption of the citizens or corporate persons of certain states from certain acts of jurisdiction or taxation; those obligations to refrain from military acts, such as the limitation of the army or navy to a certain tonnage, as in the Treaty Limiting Naval Armament, February 6, 1922, or the obligation not to fortify a certain place.[3]

General servitudes.

(*b*) There are also servitudes which may be called general, because binding alike upon every state in favor of all others, such as the innocent use of territorial seas.[4]

[1] IV Hertslet, 2783. [2] *Ibid.*

[3] By Article XIX of the Treaty Limiting Naval Armament, February 6, 1922, the United States, the British Empire, and Japan agree upon the status quo in regard to fortifications and naval bases in a defined area of the Pacific Ocean. See also Treaty of Versailles, June 28, 1919, Arts. 42–44.

[4] For the general question, see 2 Pradier-Fodéré, 834, 845.

OUTLINE OF CHAPTER XII

PROPERTY

69. PROPERTY IN GENERAL.

70. STATE PROPERTY IN INTERNATIONAL LAW.

CHAPTER XII

PROPERTY

69. Property in General

The term "property" has been used in varying senses by writers upon international law. By virtue of the fact that a state has jurisdiction over all its public property there has sometimes been confusion between the two terms, but jurisdiction may, and does, extend to persons and things of which proprietorship cannot be affirmed by the state.

In the sense commonly used in international law the property of a state is held to be all the lands, water, and air within its limits. Within this territory the state has rights to the exclusion of other states, and upon the land area may exercise the right of eminent domain.

The idea of property in this international sense is distinct from that of private ownership, which is merely relative and depends upon the regulations of the state; indeed, private property may be seized for the debts of the state.

A state may hold absolute possession of such objects as are capable of appropriation, as lands, buildings, and other material resources for public purposes. In some cases the state owns the railroads, telegraphs, mines, etc. In time of war such property receives treatment somewhat different from that of private property, and in time of peace it may receive special recognition, *e.g.* houses of ambassadors.

70. State Property in International Law

Hall outlines this subject as follows: "A state may own property as a private individual within the jurisdiction of another state; it may possess the immediate as well as the

ultimate property in movables, land, and buildings within its own territory; and it may hold property in its state capacity in places not belonging to its own territory, whether within or outside the jurisdiction of other states." [1] Property of the first class falls under the local law of the state in which it is. Property of the second class may come within the scope of international law in time of war. Property of the third class may come within the scope of international law both in time of peace and of war. If a state should abolish all distinction between public and private property and take title to all property within its jurisdiction, the treatment of such property would be determined by its nature and use.

[1] Hall, p. 171.

OUTLINE OF CHAPTER XIII

DIPLOMACY AND INTERNATIONAL RELATIONS IN TIMES OF PEACE

71. GENERAL DEVELOPMENT OF DIPLOMACY.

72. DIPLOMATIC AGENTS.
- (*a*) History.
  - (1) Privileges of ambassadors.
  - (2) Diplomacy as an art in Italy.
  - (3) Permanent ambassadors after the fifteenth century.
  - (4) The Peace of Westphalia, 1648, the beginning of modern international relations.
  - (5) Diplomatic friction, 1648–1815.
- (*b*) Rank of state agents.
  - (1) Titles of diplomatic agents.
    - (*a*) Diplomatic agents of the first class.
    - (*b*) Envoys extraordinary, envoys ordinary, and ministers plenipotentiary.
    - (*c*) Ministers resident.
    - (*d*) Chargés d'affaires.
  - (2) Reciprocity between states in the grade of agents.

73. SUITE, OR PERSONNEL OF A MISSION.
- (*a*) Official suite consists of the functionaries.
- (*b*) Non-official suite includes the family and household servants of the agent.

74. WHO MAY SEND DIPLOMATIC AGENTS.

75. WHO MAY BE SENT AS DIPLOMATIC AGENTS.
- (*a*) Case of Mr. Keiley.

76. CREDENTIALS, INSTRUCTIONS, AND PASSPORT.

77. DIPLOMATIC CEREMONIAL.
- (*a*) Historical tendencies in ceremonial.
- (*b*) Ceremonial of reception of an agent.

(*c*) Rules of precedence and places of honor.
(*d*) Prerogatives appertaining to diplomats of the first rank.
(*e*) Salutes to diplomatic representatives.

78. IMMUNITIES AND PRIVILEGES.
(*a*) Inviolability of the person of the diplomatic agent.
(1) Basis of the privilege.
(2) Extent of the privilege.
(3) Limits of immunity.
(*b*) Exterritoriality and exemptions.
(1) Exemption of agent from the criminal jurisdiction of the receiving state.
(2) Exemption of agent from civil jurisdiction of the receiving state.
(3) Immunities of family and suite of agent.
(4) The diplomatic residence exempt from local jurisdiction.
(5) Right of asylum in the house of the ambassador now generally denied.
(6) Agent generally exempt from personal taxes.
(7) Freedom of religious worship.

79. FUNCTIONS OF A DIPLOMATIC REPRESENTATIVE.
(*a*) To direct the internal business of the legation.
(*b*) To conduct the negotiations with the state to which he is accredited.
(*c*) To protect fellow-citizens, to issue and visé passports and certificates, and to present and certify extradition papers.
(*d*) To make reports to his home government.

80. TERMINATION OF MISSION.
(*a*) Through the death of the diplomat.
(*b*) In ordinary course of events.
(*c*) Under strained relations.
(*d*) Ceremonial of departure.

81. DIPLOMATIC PRACTICE OF THE UNITED STATES.
(*a*) International relations the province of the Department of State.
(*b*) Supreme Court has original jurisdiction over diplomatic agents.
(*c*) Diplomatic agents forbidden to receive presents.
(*d*) Diplomatic agents may protect subjects of other friendly powers in case of revolution.
(*e*) Diplomatic agents forbidden to participate in the political concerns of receiving country.
(*f*) Joint action with diplomatic agents of other powers at a foreign court deprecated.
(*g*) Regulations regarding official dress.
(*h*) Compensation of diplomatic agents.

82. CONSULS.

(*a*) History.
(*b*) Rank of consuls a matter of domestic law.
(*c*) Nomination and reception of consuls.
(*d*) Great variety of functions of the consul.
    (1) Duties in connection with commercial interests.
    (2) Duties relating to maritime service.
    (3) Represents certain interests of his fellow-citizens.
    (4) Furnishes information to his state.
(*e*) Special powers in Eastern states.
(*f*) Privileges and immunities vary in different states.
(*g*) Termination of the consular office.
(*h*) Appointment of consuls in United States.

CHAPTER XIII

DIPLOMACY AND INTERNATIONAL RELATIONS IN TIMES OF PEACE

71. General Development of Diplomacy

Diplomacy may be broadly defined as the art and science of international negotiation.[1] The conditions which make possible established relations among states are of comparatively recent origin. In the days when stranger and enemy were not distinguished, and when "strange air made a man unfree," there could be no extended relations among states. In very early times, however, states had some relations with one another, and a few general principles were observed in carrying on such business as might be necessary. These growing relations have given rise to what is known as the right of legation. Sometimes a right of intercourse between states has been claimed on the ground that the citizens of one state cannot be excluded from the natural advantages of another state, on the ground that all men have an equal right to innocent use of the earth's resources, or on more abstract grounds of moral duty variously interpreted. As the actual practice of states never has recognized such a right, to contend for it would hardly be necessary. States put restrictions upon commerce, even to the exclusions of goods and persons. In some cases where the terms of the state enactment may not be prohibitive, the conditions of admission amount to practical prohibition.[2]

[1] For other definitions see I Satow, 1.

[2] U. S. Chinese Exclusion Act, 1882, 5 U. S. Comp. Sts. § 4290 *et seq.*

The influence of commerce in its many forms, the idea of unity of mankind in its various manifestations, the growth of neighborhood on the part of European states, and the necessity of respect for each other on the part of these states, made interstate relations imperative and convenient. While the right of intercourse might be questioned, the necessity and convenience of interstate relations admitted of no question.

72. Diplomatic Agents

(*a*) In very early times special privileges were extended to heralds, ambassadors, or other bearers of the state will. Laws[1] and history record as a fact this practice which had long been observed. The ambassador was often a person who in his own state held some priestly office. In the days of the Roman dominance, the office of ambassador was commonly exercised by one holding a religious office, and while the unity represented by the church remained prominent, its officials were often ambassadors. Both from necessity and from the sacred character of the person, the ambassador was usually regarded as inviolable. The person of the ambassador was respected long before there was any recognition of the rights and dignity of states as states. In order that there might be any such intercourse, it was necessary that the agents should not be placed in undue personal peril.[2]

History: Privileges of ambassadors.

With the preëminence of the Italian city states in the Middle Ages there came the development of diplomacy as an art. The most distinguished men of the times were called to this state service. Machiavelli's name is inseparably linked to one school of diplomacy. Dante, Petrarch, Boccaccio, and others whose names have become famous, were sent on missions.[3]

Diplomacy as an art in Italy.

[1] Digest, LVII, 17.

[2] 3 Pradier-Fodéré, 1233.

[3] Nys, "Les Origines du Droit International," 297; I Hill, History of European Diplomacy, 308.

During the thirteenth century, Venice outlined the policy which her ambassadors should follow, and there the system of foreign representation became well established. This system included the granting of a commission, instructions, letter of credence, attachés, etc. Italy may, indeed, be called the home of the diplomatic system.

Permanent ambassadors after the fifteenth century.

For many years, in fact till comparatively recent times, ambassadors were looked upon with suspicion, as spies whom monarchs were more willing to give than to receive. Gradually, however, the practice of sending and receiving ambassadors was seen to have much value. During the fifteenth century, which marks the beginning of the modern period in the history of diplomacy, the practice of sending permanent ambassadors seems to have arisen. There may have been isolated cases of sending of permanent ambassadors before this time, but from the fifteenth century the practice became more and more common, though the different countries did not observe any uniform regulations as to personnel, procedure, or in other respects. From this time diplomacy became more of a career, and one going on a mission to a foreign country received careful preparation that he might outwit the representatives of the state to which he was sent. Sir Henry Wotton's oft-quoted definition of an ambassador, "An ambassador is an honest man, sent to *lie* abroad for the good of his country," [1] describes the attitude taken in many countries toward the office, when early in the seventeenth century he wrote the definition in Christopher Flecamore's album. Gradually the rules of international negotiation became established, and treatises upon the subject appeared.

The Peace of Westphalia in 1648, which marks the beginning of modern international relations, showed that modern diplomacy had already obtained a recognition, and served to give

[1] Walton, "Life of Wotton," 155.

it a more definite form. This date serves as a boundary to the first division of the modern period in the history of diplomacy. The years from the early part of the fifteenth century to the Peace of Westphalia are the years of beginnings. From this time the system of permanent ministers, which so greatly changed the character of international negotiations, became almost a necessity through the development of the equilibrium of the states of Europe.[1]

The Peace of Westphalia.

During the years 1648 to 1815 the relations of states became more complex, and the business of international negotiation more delicate. Diplomatic practice, always tending to look to precedent, suffered severe strains under the ambitious monarchs occupying the thrones of Europe after the Peace of Westphalia. Principles and precedent were often disregarded to obtain political ends. So great was the friction that at length some of the more commonly disputed questions were settled at the Congress of Vienna, 1815, and some of the remaining questions at the Congress of Aix-la-Chapelle, 1818.

Diplomatic friction, 1648–1815.

(*b*) The question of relative rank of state agents gave rise, in the days before the Congress of Vienna, to many difficulties. The protocol of that Congress of March 9, 1815, together with the eighth article adopted at the Congress of Aix-la-Chapelle, November 21, 1818, gives the basis of present practice as follows: —

Rank of state agents.

"In order to prevent in future the inconveniences which have frequently occurred, and which may still occur, from the claims of Precedence among the different Diplomatic characters, the Plenipotentiaries of the Powers who signed the Treaty of Paris have agreed on the following Articles, and think it their duty to invite those of other Crowned Heads to adopt the same regulations: —

[1] Calvo, § 1311 ff.

Division of Diplomatic Characters

"Art. I. Diplomatic characters are divided into Three classes: That of Ambassadors, Legates, or Nuncios.

"That of Envoys, Ministers, or other persons accredited to Sovereigns.

"That of Chargés d'Affaires accredited to Ministers for foreign affairs.

Representative Character

"Art. II. Ambassadors, Legates, or Nuncios only shall have the Representative character.

Special Missions

"Art. III. Diplomatic characters charged with any special Mission shall not, on that account, assume any superiority of Rank.

Diplomatic Precedence

"Art. IV. Diplomatic characters shall rank in their respective classes according to the date of the official notification of their arrival.

Representatives of the Pope

"The present Regulation shall not occasion any change respecting the Representative of the Pope.

Form for Reception of Diplomatic Agents

"Art. V. There shall be a regular form adopted by each State for the reception of Diplomatic Characters of every Class.

Diplomatic Agents of Courts allied by Family or Other Ties

"Art. VI. Ties of consanguinity or family alliance between Courts confer no Rank on their Diplomatic Agents. The same rule also applies to political alliances.

ALTERNATION OF SIGNATURES IN ACTS OR TREATIES

"ART. VII. In Acts or Treaties between several Powers that admit alternity, the order which is to be observed in the signatures of Ministers shall be decided by lot.[1]

"ART. VIII. It is agreed between the Five Courts that Ministers Resident accredited to them shall form, with respect to their Precedence, an intermediate class between Ministers of the Second Class and Chargés d'Affaires." [2]

To the articles, except the last, Austria, Spain, France, Great Britain, Portugal, Prussia, Russia, and Sweden were parties. Spain, Portugal, and Sweden were not parties to the eighth article. Theoretically these rules are binding only upon those states parties to the treaties, but practically they are accepted by all civilized states.

The four grades are as follows: —

1. Ambassadors, legates, and nuncios.
2. Envoys, ministers, or other persons accredited to sovereigns.
3. Ministers resident.
4. Chargés d'affaires.

The first three grades are accredited to the sovereign. The fourth grade, chargés d'affaires, is accredited to the minister of foreign affairs.

Titles of diplomatic agents.

(1) The rank of the agent does not necessarily have any relation to the importance of the business which may be intrusted to him. The titles given to the different diplomatic agents, at the present time, are in a general way descriptive,[3] as follows: —

(*a*) *Diplomatic agents of the first class* are held to represent the person of the sovereign. Ambassador ordinary formerly

[1] I Hertslet, 62, 63.

[2] *Ibid.*, 575. These rules have been adopted by the U. S. Department of State.

[3] I Satow, 229.

designated one holding a permanent mission. Ambassador extraordinary designated one on a special mission, or having power to act in exceptional circumstances. This, however, is now simply a title of somewhat superior honor giving no other advantage. Papal legates and nuncios rank as, and for practical purposes are, ambassadors extraordinary, though representing particularly ecclesiastical affairs and the Pope as head of the Church. Legates are chosen from the cardinals and sent to countries recognizing the papal supremacy.[1] The representative of the Pope is usually accorded the position of "Doyen" of the "Diplomatic Corps" in states receiving representatives of the Pope. Otherwise, the "Doyen" is the senior diplomat of the highest rank.

(*b*) *Envoys extraordinary, envoys ordinary, and ministers plenipotentiary* have in general the same functions and rank. With these rank the papal internuncio. The general idea is that the agents of the second class do not stand for the person of the sovereign, but for the state.

(*c*) *Ministers resident* are regarded as upon a less important mission than the agents of the first or second class. They are frequently sent by the greater powers to the lesser powers.

(*d*) *Chargés d'affaires* ceremonially rank below the ministers resident. They are accredited to the minister of foreign affairs, while members of the first three classes are accredited to the sovereign. A chargé d'affaires may perform the functions of the higher grades of agents and has the same general privileges. When a consul is charged with a diplomatic mission he ranks with the chargés d'affaires. Commissioners on various missions are sometimes accorded the same rank; but, as they do not bear the title, commissioners cannot claim the rank of the chargé d'affaires, though in their functions there may be no difference.

[1] Calvo, § 1328 ff.

(2) There is no rule as to the grade of diplomatic agent which one state shall send to another, though it was formerly held that only states entitled to royal honors could send ambassadors. It is now customary for states to agree among themselves as to the relative ranks of their diplomatic agents. Thus the United States by an act of 1893 provided that "whenever the President shall be advised that any foreign government is represented or is about to be represented in the United States by an ambassador, envoy extraordinary, minister plenipotentiary, minister resident, or special envoy or chargé d'affaires, he is authorized in his discretion to direct that the representative of United States to such government shall bear the same designation. This provision shall in no wise affect the duties, powers, or salary of such representative." [1]

Reciprocity as to the grade of agents.

The rank of a diplomatic agent is a mark of dignity and honor particularly of consequence in matters of etiquette and ceremonial. Reciprocity between states is the general rule in the grade of agents. The old theory that agents of the first rank had access to the ear of the sovereign is no longer held, and all grades alike represent both the sovereign and the state from which they come.

73. Suite

The personnel of a mission may be distinguished as the official and the non-official.

(*a*) The official suite consists of the functionaries, and varies in number according to the dignity and importance of the mission. Formerly the number was scrutinized with great care, owing to the fear that a numerous suite might endanger the safety of the receiving state. The official suite may include, (1) the counselor to the mission, (2) the secretaries, (3) the attachés, military, naval,

Official suite.

[1] March 1, 1893, 27 U. S. Sts. at Large, c. 182.

and others, (4) the interpreters and dragomans, (5) the clerks and accountants, (6) the couriers, (7) the chaplain, (8) the doctor, and in some instances other officers necessary for the performance of the official functions.

(*b*) The non-official suite includes the family of the diplomatic agent and those in his household employ. This may include, beside his immediate family, (1) the private chaplain, (2) the private doctor, (3) the private secretaries, (4) the domestic servants of various grades.

Non-official suite.

74. Who May Send Diplomatic Agents

It is the general rule that sovereign states only may send ambassadors or other diplomatic agents. Sometimes diplomatic relations are maintained between states when both are not fully sovereign, as was the case in the relations between Bavaria, a member of the German Empire, and France. In general, where the sovereignty of a state is not complete, its right of legation is fixed by the treaty which impairs its sovereignty. A state which has not full sovereign powers may have a partial right of legation, either active or passive, or a right to send diplomatic agents with limited functions.

The sending of a diplomatic agent is essentially an act of the sovereign person, whether he be a monarch, president, council, or have other title. The domestic law determines who this person shall be. International law makes no distinction.

In each state a department, usually called the department of foreign affairs, has the business of international intercourse in charge. The organization of this department and the general methods of operation are matters of domestic law. All foreign states need to know is to what extent this department is competent to carry on negotiations.

75. Who May Be Sent

Before actually sending a diplomatic agent, a state usually obtains assurance from the receiving state that the proposed agent will be an acceptable person. If the proposed agent is a *persona non grata*, it is held that the foreign state is not obliged to give its reasons for refusing to receive him. To refuse a given person does not imply any lack of courtesy to the sending state on the part of the refusing state. A state may refuse to receive one of its own citizens as the minister of a foreign state. Sometimes states have refused to receive those who have in the sending state taken positions manifesting hostile disposition toward the receiving state.

In 1885 the Italian government refused to receive Mr. Keiley as United States representative on the ground that he had denounced the overthrow of the temporal power of the Pope. It was considered probable that one who had taken so decided an attitude toward an action of the government to which he was sent would hardly be acceptable. Mr. Keiley a few weeks later was refused by Austria-Hungary on the ground that his wife was a Jewess and his marriage only a civil one. President Cleveland showed his attitude toward this action in his first annual message, 1885. "The Austro-Hungarian government finally decided not to receive Mr. Keiley as the envoy of the United States, and that gentleman has since resigned his commission, leaving the post vacant. I have made no new nomination, and the interests of this government at Vienna are now in the care of the secretary of legation, acting as chargé d'affaires *ad interim*." [1]

Case of Mr. Keiley.

76. Credentials, Instructions, Passport

Before starting upon his mission, a diplomatic representative receives, if of one of the first three classes, from the

[1] 8 Richardson, Messages, p. 326.

head of the state, if of the fourth class (chargé d'affaires), from the minister of foreign affairs, a letter of credence. In the United States the President signs the letters of credence of diplomatic agents above the rank of chargé d'affaires.[1] In these instances the letter is addressed to the head of the foreign state. In the case of chargé d'affaires the letter is addressed to the minister of foreign affairs and signed by the Secretary of State. A letter of credence gives the name, the character and general object of the mission, and requests for the agent full faith and credence as the state's representative. In case of representatives to Turkey, besides the letter to the Sultan, formerly letters were also taken to the grand vizier and to the minister of foreign affairs. Representatives of the Pope carry in place of letters of credence papal bulls. Sometimes a diplomatic agent receives also letters of recommendation to persons of importance in the foreign country. These letters have a semi-official character in many cases. While a letter of credence may give power to open treaty negotiations, it is usual to give a special letter conferring *full powers* or *general full powers* to close and sign a treaty, or to act in behalf of the state in some manner not covered by his instructions. These letters are commonly letters patent.

Letters of credence.

The diplomatic agent also customarily receives instructions which may be either for his own guidance or to be communicated to the foreign state. If to be communicated to the foreign state, the instructions make more fully known his special functions. In all cases the agent is bound by his instructions, and should there be doubt as to method of action it is easy, in these days of rapid communication, to entertain a matter *ad referendum*.

Instructions.

The diplomatic agent also receives for himself, family and suite, a special passport. The special passport "differs from

[1] President Wilson signed the Treaty of Versailles "in his own name and by his own proper authority."

the ordinary passport in that it usually describes the official rank or occupation of the holder, and often also the purpose of his traveling abroad, while generally omitting the description of his person."[1] This may serve not only the purpose of the ordinary passport, but may also give an official introduction to the bearer.

Special passport.

The papers usually furnished to diplomatic representatives of the United States include: —

1. A sealed letter of credence to the head of the state or minister of foreign affairs according to rank of the representative.
2. "An open office copy of the letter of credence."
3. The special passport above mentioned.
4. "A copy of the Register of the Department of State."
5. A letter of credit upon the bankers of the United States.
6. A copy of Instructions to the Diplomatic Officers of the United States.
7. A copy of the Consular Regulations of the United States.

(FORM OF)

LETTER OF CREDENCE

A..... B.....,

President of the United States of America.

To.....

.....

.....

GREAT AND GOOD FRIEND:

I have made choice of..... one of our distinguished citizens, to reside near the Government of Your.....in the quality of..... He is well informed of the relative interests of the two countries and of our sincere desire to cultivate to the fullest extent the friendship which has so long subsisted between the two Governments. My knowledge of his high character and ability gives me entire confidence that he will constantly endeavor to advance the interest and prosperity of both Governments, and so render himself acceptable to Your.....,

[1] "The American Passport," U. S. Dept. State, 1898, p. 7.

I therefore request Your.....to receive him favorably and to give full credence to what he shall say on the part of the United States, and to the assurances which I have charged him to convey to you of the best wishes of this Government for the prosperity of.....
May God have Your.....in His wise keeping.

Written at Washington this.....day of.....in the year.....

Your good friend,

A.....B.....

By the President,

.....

Secretary of State.

77. Diplomatic Ceremonial

(*a*) In certain countries diplomatic ceremonial has been very elaborate and complex. The tendency during the nineteenth century was toward simplification. Each state has the power to determine its own ceremonial for the most part.[1] Of course no state can disregard established rules as to rank, precedence, and similarly generally recognized practices. At the time when these practices originated it was imperative that there should be some fixed mode of procedure which a state could follow without giving offense in its treatment of a foreign representative. Much of the ceremonial became fixed during the latter part of the seventeenth and during the eighteenth century. In the days of absolutism the monarch naturally demanded such recognition of his representative in a foreign country as befitted his own estimate of the dignity of the monarchical office. It may not be unfortunate that the monarch placed a high estimate upon the sovereign office and devised a ceremonial commensurate with this estimate, for what was once done out of respect for and in response to the demand of a personal sovereign, is now done out of respect for the dignity of the state itself. Thus

Historical tendencies in ceremonial.

[1] 1 Satow 339

in the days of more democratic sovereignties international representatives are clothed with a dignity which both elevates the attitude of participants in international negotiations and gives greater weight to their conclusions. The ceremonial also fixes a definite course of procedure which any state may follow without giving offense to another, whether it be weak or powerful.

(*b*) While the minor details of the ceremonial of reception of a diplomatic agent are not invariable, certain customs are well established. A diplomat officially notifies the receiving state of his arrival by sending, (1) if he be of the first rank, a secretary of the embassy to the minister of foreign affairs, with a copy of his letter of credence and a request for a day and hour when he may have an audience with the head of the state in order to present his credentials, (2) if of the second rank, while sometimes the above procedure is allowed, he usually makes the announcement and request in writing, (3) if of the third rank, he always observes the last-mentioned procedure, (4) if of the fourth rank, chargé d'affaires, he notifies the minister of foreign affairs of his arrival and requests an audience.

Reception of an agent.

The audience may be for any grade more or less formal, public or private. Usually diplomats of the first rank are received in public audience. At the audience the diplomat presents his letter of credence, and usually makes a brief address, of which he has earlier furnished a copy to the minister of foreign affairs in order that a suitable reply may be prepared. Diplomats of the second rank customarily receive a similar solemn audience. This may or may not be granted to ministers of the third rank. Official visits, varying somewhat in ceremonial in different states, follow.

(*c*) From the time when permanent missions began to be common, conflict between the representatives of different states made necessary fixed rules of precedence. As Wicquefort said in the latter part of the seventeenth century, "One of

the things that most hinders Embassadors from paying one another civilities, is the Contest they have concerning Honours and Rank; not only on Account of the Competition of their Masters, but sometimes also by Reason of some Pretensions they have amongst themselves." [1] Wicquefort's citations of cases give ample evidence of the confusion prevailing in his day. Bynkershoek, in "De Foro Legatorum," Chapters I and XII, shows that the confusion was scarcely less in 1721, though the rank by title was coming to be more fully recognized. Vattel in 1758 shows that there had arisen a more definite ceremonial [2] and a fairly clear gradation, yet as this had never been agreed to by any considerable number of states, and was not in accordance with any generally recognized principle, there were contests still. By the Congress of Vienna (1815) and Aix-la-Chapelle (1818) many of the disputed points in regard to precedence were adjusted. Certain general propositions are now admitted, such as, that no diplomat can pretend to special honors or immunities above other diplomats of the same rank.[3] The rule of the Congress of Vienna is followed, by which diplomats of the same class rank according to the precedence in the date of the official notification of their arrival.

Rules of precedence.

Places of honor are now quite definitely fixed. On ceremonial occasions, where the representatives are seated at a table, as in an international congress, it may be somewhat varied as fronting the main window, opposite the main entrance to the room, in the place receiving the light over the left shoulder. When the place is determined by the relation to the head of the table or the presiding officer, the first honor, except in Turkey, China, and in some religious ceremonials, is at his right, the second at his

Places of honor.

[1] Wicquefort, "The Embassador and His Functions," Digby's translation, Ch. XXII, p. 201; 1 Satow, 339 *et seq.*

[2] "Droit des gens," Liv. IV, Ch. VI.

[3] Calvo, § 1328 ff.

left, the third in the second place on the right, the fourth in the second place on the left, and so on. In processions the place of honor is sometimes first, sometimes last. For relatively short processions, certain more definite rules are usually observed. When only two participate, the first place is the place of honor; when three participate, the middle place, the place in advance being the second honor and the place in the rear the third; when four participate, the second place is the place of honor, the place in advance the second, the third and fourth being in honor in order; when five participate, the middle is the place of honor, the second place being the second in honor, the first the fourth in honor, the fourth the third in honor, and the fifth the fifth in honor.[1] These rules are not invariable, however.

To avoid friction as to place of honor in signing treaties, etc., the principle of the *alternat* is usually followed, by which the copy going to a given nation has the name of its own representative first in order.[2] Sometimes the order is determined by lot, and sometimes is alphabetical in the order of the names of the states parties to the treaty.

(*d*) Certain prerogatives are held to appertain to the office of ambassador and to diplomats of the first rank. Among these are: (1) the title of Excellency,[3] (2) the right to remain covered in the presence of the sovereign, unless the sovereign himself is uncovered, (3) the privilege of a dais in his own home, (4) the right to use a "coach and six" with outriders, (5) military and naval honors, (6) the use of the coat of arms over the door, (7) invitations to all court ceremonies. This last is usually extended to all diplomats. Those of lower rank than the ambassador sometimes claim modified forms of the above prerogatives.

Prerogatives.

[1] Lehr, "Manuel des Agents Diplomatiques," § 367 ff.

[2] The Department of State instructs the representatives of the United States to follow this practice.

[3] 1 Satow, 354.

Many of the interesting phases of diplomatic ceremonial are survivals of forms which in earlier days were most jealously and strenuously guarded. The closer relations of states and better understanding of mutual relations have made unnecessary the observance of many forms once vital to harmony.[1]

Many courtesies are regarded as due diplomatic representatives by virtue of their rank. These are not uniform at the various courts, but generally include notification of accession to the throne, notifications of births and deaths in the royal family, congratulations and condolences as public events warrant, and many others.

(*e*) Diplomats are also entitled to receive salutes, which are usually arranged for in advance. The ambassador receives a salute of nineteen guns; envoys extraordinary and ministers plenipotentiary, fifteen; the minister resident, thirteen; and the chargé d'affaires, eleven.

Salutes.

78. Immunities and Privileges

Few subjects involved in international relations have been more extensively discussed than the privileges and immunities of diplomatic agents. Many of the earliest treatises on international affairs were devoted to such questions. In order that any business between states might be carried on, some principles upon which the diplomatic agent could base his action were necessary. The treatment of the agent could not be left to chance or to the feeling of the authorities of the receiving state. Gradually fixed usages were recognized. These immunities and privileges may be considered under two divisions: personal inviolability, and exemption from local jurisdiction, otherwise known as extraterritoriality.

(*a*) The person of the agent was by ancient law inviolable. According to the dictum of the Roman Law, *sancti habentur*

[1] 1 Satow, 356.

legati. In accord with this principle the physical and moral person is inviolable. Any offense toward the person of the ambassador is in effect an offense to the state which he represents, and to the law of nations. The receiving state is bound to extend to the diplomatic agent such protection as will preserve his inviolability. This may make necessary the use of force to preserve to the diplomatic agent his privileges. The idea of inviolability, as Calvo says, is absolute and unlimited, and based, not on simple convenience, but upon necessity. Without it diplomatic agents could not perform their functions, for they would be dependent upon the sovereign to whom they might be accredited.[1] In many states laws have been enacted during the last half of the nineteenth century fixing severe penalties for acts which affect the diplomatic agent unfavorably in the performance of his functions or reflect upon his dignity.[2]

Inviolability of the person of the agent.

Basis of the privilege.

The privilege of inviolability extends, (1) alike to agents of all classes; (2) to the suite, official and non-official; (3) to such things as are convenient for the performance of the agent's functions; (4) during the entire time of his official sojourn, *i.e.*, from the time of the announcement of his official character to the expiration of a reasonable time for departure after the completion of his mission. This also holds even when the mission is terminated by the outbreak of war between the state from which the agent comes and the state to which he is accredited. (5) By courtesy the diplomatic agent is usually, though not always, accorded similar privileges when passing through a third state in going to or returning from his post.

Extent of the privilege.

A diplomatic agent may place himself under the law, says

[1] "Droit Int.," § 1481 ff.

[2] 1 Lehr, "Manuel," §§ 988–998; 1 Satow, 254; In re Republic of Bolivia Exploration Syndicate, L. R. (1914), Ch. 139.

Despagnet, so far as attacks upon him are concerned: (1) when he voluntarily exposes himself to danger, in a riot, duel, civil war; (2) when in his private capacity he does that which is liable to criticism, *e.g.*, as a writer or artist, provided the criticism should not degenerate into an attack upon his public character; (3) when the attacks upon him are in legitimate personal self-defense; (4) when, by his actions, he provokes on the part of the local government precautionary measures against himself, *e.g.* if he should plot against the surety of the state to which he is accredited.[1] Only in the case of extreme necessity, however, should any force be used. It is better to ask for the recall of the agent. In case of refusal or in case of urgent necessity the agent may be expelled.

Limits of immunity.

(*b*) Exemption from local jurisdiction of the state to which a diplomatic agent is sent, or extraterritoriality in a limited sense, flows naturally from the admitted right of inviolability. The term "extraterritoriality" is a convenient one for describing the condition of immunity which diplomatic agents enjoy in a foreign state, but it should be observed that the custom of conceding these immunities has given rise to the "legal fiction of extraterritoriality," rather than that these immunities are based on a right of extraterritoriality. The practice of granting immunities was common long before the idea of extraterritoriality arose.[2] The exemptions give to diplomatic agents large privileges.

Extraterritoriality and exemption.

(1) The diplomatic agent is exempt from the criminal jurisdiction of the state to which he is accredited. In case of violation of law the receiving state has to decide whether the offense is serious enough to warrant a demand for the recall of the agent, or whether it should be passed without notice. In

[1] Despagnet, "Droit international public," de Boeck 4th ed., § 235; Heffter, § 204.

[2] Grotius, "De Jure Belli," II, 18.

extreme cases a state might order the agent to leave the country, or in case of immediate danger might place the agent under reasonable restraint. Hall considers these "as acts done in pursuance of a right of exercising jurisdiction upon sufficient emergency, which has not been abandoned in conceding immunities to diplomatic agents." [1]

Agent exempt from criminal jurisdiction.

(2) The diplomatic agent is exempt from civil jurisdiction of the state to which he is sent, and cannot be sued, arrested, or punished by the law of that state.[2] This rule is sometimes held to apply only to such proceedings as would affect the diplomat in his official character; but unless the diplomat voluntarily assume another character, he cannot be so proceeded against. If he become a partner in a firm, engage in business, buy stocks, or assume financial responsibilities, it is held in theory by some authorities that the diplomatic agent may be proceeded against in that capacity. The diplomatic agent of the United States is distinctly instructed that "real or personal property, aside from that which pertains to him as a minister, . . . is subject to the local laws." [3] The practice is, however, to extend to the diplomat in his personal capacity the fullest possible immunity, and in case of need to resort to his home courts, or to diplomatic methods by appeal to the home government, for the adjustment of any difficulties that may involve its representative in foreign court proceedings. The real property of the diplomatic agent is, of course, liable to local police and sanitary regulations. In cases where a diplomatic agent consents to submit himself to foreign jurisdiction, the procedure and the judgment, if against him, cannot involve him in such manner as seriously to interfere with the performance of his functions.

Agent exempt from civil jurisdiction.

[1] Hall, p. 183.
[2] 7 U. S. Comp. Sts. §§ 4063, 4064; Wheat. D., 308-310.
[3] Instructions to Diplomatic Officers, 1897, § 47.

He cannot be compelled to appear as witness in a case of which he has knowledge; however, it is customary in the interests of justice for the diplomatic agent to make a deposition before the secretary of the legation or some proper officer. By the Constitution of the United States, in criminal prosecutions the accused has a right to have the evidence taken orally in his presence. The refusal of M. Dubois, the Dutch minister to the United States in 1856, to give oral testimony, resulted in his recall.[1] The Venezuelan minister, however, testified in open court as a courtesy to the United States government in the trial of the assassin of President Garfield.[2] The United States at the present time maintains that "a diplomatic representative cannot be compelled to testify, in the country of his sojourn, before any tribunal whatsoever." This may be considered the generally accepted principle, though the interests of general justice and international courtesy frequently lead to voluntary waiving of the rule with the consent of the accrediting state.

Immunities of family and suite.

(3) The official and non-official family enjoy the immunities of their chief as necessary for the convenient performance of his mission. Questions in regard to the immunities of the non-official suite have sometimes arisen. To avoid this it is customary for the diplomat to furnish the receiving state with a list of his family. Great Britain does not admit the full immunity of domestic servants. When Mr. Gallatin was United States minister to Great Britain, his coachman, who had committed an assault beyond the *hôtel* of the minister, was held liable to the local jurisdiction. As a diplomatic agent can voluntarily turn over an offender to the local authorities, and as he would naturally desire the observance of local law, there would be little danger of friction with local authorities anywhere, provided a just cause could be shown.

Couriers and bearers of dispatches are entitled to immuni-

[1] 4 Moore, § 662. [2] *Ibid.*

ties so far as is necessary for the free performance of the specific function.

(4) The house and all grounds and buildings within the limits of the diplomatic residence are regarded as exempt from local jurisdiction. Great Britain claimed the right of entry to arrest Mr. Gallatin's coachman above mentioned, though admitting that such entrance should be made at a time to suit the convenience of the minister if he did not care to hand him over directly. This immunity extends also to carriages and other necessary appurtenances of the mission.

The diplomatic residence exempt from local jurisdiction.

Children born to the official family in the house of the diplomatic agent are considered as born in the state by which the agent is accredited.

(5) The right of asylum in the house of the ambassador is now generally denied. In 1726 the celebrated case of the Duke of Ripperda, charged with treason, gave rise to the decision by the Council of Castile that the duke could be taken from the English legation by force if necessary, because the legation, which had been established to promote good relations between the states, would otherwise be used for overthrowing the state in which it had been established.[1] It may be regarded as a rule that, in Europe and in the United States, the house of a diplomatic agent affords only temporary protection for a criminal, whether political or otherwise, and that on demand of the proper authority the criminal must be surrendered. Refusal is a just ground for demand for recall of the diplomatic agent. The United States instructs its agents that "The privilege of immunity from local jurisdiction does not embrace the right of asylum for persons outside of a representative's diplomatic or personal household."[2] The right of asylum is, however, recognized in practice, both by the

Right of asylum generally denied.

[1] De Martens, "Causes Cél.," I, 174.

[2] Instructions to Diplomatic Officers, 1897, § 50.

United States and European nations, as pertaining to the houses of the diplomats in some American states.[1] The United States, in 1870, tried without avail to induce the European nations to agree to the discontinuance of the practice. In 1891, in Chile, Minister Egan, of the United States, afforded refuge in the legation to a large number of the political followers of Balmaceda. Chile demanded his recall, but the United States maintained that a reason should be assigned for such demand. In Eastern countries it has been the practice to afford asylum in legations in times of political disturbance and to political offenders. In 1895 the British ambassador at Constantinople gave asylum to the deposed grand vizier at Constantinople. It may be said, however, that the tendency is to limit the granting of asylum to the fullest possible extent,[2] and finally to abolish the practice altogether, as has been the case with the ancient extension of this privilege to the neighborhood of the legation under the name of *jus quarteriorum*.

(6) In general, the diplomatic agent is exempt from personal taxes and from taxes upon his personal goods. The property owned by and devoted to the use of the mission is usually exempt from taxation. In this respect the principle of reciprocity is followed among some states. The taxes for betterments, such as paving, sewerage, etc., are regarded as proper charges upon the mission. A state has a right to make such regulations as it deems necessary to prevent the abuse of this immunity from taxation. It is also customary for a third state to grant to a diplomat passing through its territory immunity from duties. Diplomatic agents are also exempt from income, military, window, and similar taxes.

Taxation exemptions.

[1] See action of American and Italian Legations in Peru, 1913, U. S. For. Rel. 1913, p. 1141.

[2] 1 Satow, p. 290.

(7) It is hardly necessary now to mention the fact that the diplomatic agent is entitled to freedom of religious worship within the mission, provided there be no attempt by bell, symbol, or otherwise to attract the attention of the passer-by to the observance. This privilege was formerly of importance, but now is never questioned.

Freedom of religious worship.

79. Functions of a Diplomatic Representative

The functions of a diplomatic representative in a broad sense are, to direct the internal business of the legation, to conduct the negotiations with the state to which he is accredited, to protect citizens of his state [1] and to issue passports under proper restrictions,[2] and to make reports to his home government.

(*a*) The internal business of the mission may in general be classified as concerned with (1) the custody of archives, (2) diplomatic correspondence [3] involving at times the use of cipher, (3) record of the work of the legation, (4) the exercise of a measure of jurisdiction over the household. In grave cases the diplomat must send the offender home for trial, or under certain circumstances, if a native of the state, hand the offender over to the local authorities. Otherwise his jurisdiction is mainly of a minor disciplinary sort. The assumption of such authority as claimed by Sully, in 1603, when he summarily condemned to death one of the French suite, is now absolutely denied. Indeed, James I would not decapitate the offender whom Sully had delivered to him for execution. In 1896 Great Britain denied the right of the Chinese ambassador to detain a China-

Internal business of the legation.

[1] 4 U. S. Comp. Sts. § 3956. [2] 7 U. S. Comp. Sts. § 7623.

[3] Till the reign of Louis XIV, Latin was the language of diplomacy; from that time, French became more and more used. Since the Congress of Vienna, 1815, any language may be used without offense, and at Paris in 1919 and Washington in 1921–22 both English and French were official.

man who was held in the legation under charge of political conspiracy, and compelled his release.[1]

(*b*) The conduct of negotiations with the state to which the representative is accredited may involve, (1) verbal communications with the sovereign or ministers. The purport of such communications may be preserved in writing known as *briefs of the conversation*, or *aids to the memory*. In cases of somewhat formal conversations the written reports may be called *notes* or *memoranda*. To the *procés-verbaux*, or reports of international conferences for the discussion of treaty stipulations, the name *protocol* is usually given. (2) Formal communications with the sovereign or ministers; (3) the maintenance of diplomatic privileges and immunities; (4) such action as may be necessary to protect his state's interests so far as possible, and particularly its treaty rights.

Conduct of negotiations.

(*c*) The diplomat's relations to the citizens of his own country are largely determined by the domestic law of his own state, and usually involve, (1) a measure of protection to his fellow-citizens; (2) issue and *visé* of passports, and in some countries the issue of certificates of nationality and travel certificates; (3) in cases of extradition of citizens of his own state from the foreign state, the presentation of the requisition for extradition; and in cases of extradition of citizens of the state to which he is accredited from his own state, usually the certification that the papers submitted as evidence are "properly and legally authenticated."[2] In some states diplomats are authorized to perform notarial acts.[3] (4) The exercise of a reasonable courtesy in the treatment of his fellow-citizens.

Relation to fellow-citizens.

All these functions vary with local law. The practice is not uniform, as is evidenced in the inconsistencies in regard to regulations as to marriage by the diplomatic agent.[4]

[1] 1 Satow, 268-271.
[2] 10 U. S. Comp. Sts. § 10,116.
[3] 4 U. S. Comp. Sts. § 3211.
[4] Hall, n. 1, p. 195; Stocquart, Laws of Marriage.

(*d*) In making reports the diplomat is supposed to keep his own government informed upon (1) the views and policy of the state to which he is accredited, and (2) such facts as to events, commerce, discoveries, etc., as may seem desirable. These reports may be regular at specified periods, or special.

Reports to home government.

80. Termination of Mission

The mission of a diplomatic representative may terminate in various ways.

(*a*) A mission may terminate through the death of the diplomat. In such a case there may properly be a funeral befitting the rank of the diplomat. The property and papers of the mission are inventoried and sealed by the secretary, or in case of the absence of secretaries and other proper persons, by the diplomats of one or more friendly powers. The inheritance and private property of the diplomat, of course, follow the law of his country, and the property of the deceased is exempt from local jurisdiction.

Through death of agent.

(*b*) The mission may terminate in ordinary course of events, by (1) expiration of the period for which the letter of credence or full power is granted; (2) fulfillment of the purpose of the mission, if a special mission; (3) change of grade of diplomat; (4) the death or dethronement of the sovereign to whom the diplomatic agent is accredited, except in cases of republican forms of government. In the above case new letters of credence are usually regarded as essential to the continuance of the mission. The weight of opinion seems to indicate that the mission of a diplomat is terminated by a change in the government of his home country through revolution, and that new letters of credence are necessary for the continuance of his mission.

In ordinary course of events.

(*c*) A mission may be interrupted or broken off through

strained relations between the two states or between the diplomatic agent and the receiving state. (1) A declaration of war immediately terminates diplomatic relations. (2) Diplomatic relations may be broken off by the personal departure of the agent, which departure is for a stated cause, such as the existence of conditions making the fulfillment of his mission impossible, or the violation of the principles of international law. (3) Diplomatic relations may be temporarily suspended, owing to friction between the states, as in the case of the suspension of diplomatic relations between Great Britain and Venezuela from 1887 to 1897, owing to dispute upon questions of boundary. In 1891 Italy recalled her minister from the United States on account of alleged tardiness of the United States authorities in making reparation for the lynching of Italians in New Orleans on March 14, 1891.[1] (4) A diplomatic agent is sometimes dismissed either on grounds personal to the diplomat, or on grounds involving the relations of the two states. When, in 1888, the demand for the recall of Lord Sackville, the British minister at Washington, was not promptly complied with, Lord Sackville was dismissed and his passport sent to him. Lord Sackville had, in response to a letter purporting to be from an ex-British subject, sent a reply which related to the impending presidential election. His recall was demanded by telegraph, October 27. The British government declined to grant it without time for investigation, and his passport was sent him on October 30 even though there seemed to be little ground for such urgency. In 1871, "The conduct of Mr. Catacazy, the Russian minister at Washington, having been for some time past such as materially to impair his usefulness to his own Government, and to render intercourse with him for either business or social purposes highly disagreeable," it was the expressed opinion of the President that "the interests of both countries would be promoted . . . if the head

Under strained relations.

[1] For. Relations U. S. 1891, p. 658 ff.

of the Russian legation here was to be changed." The President, however, agreed to tolerate the minister till after the contemplated visit of the grand duke. The communication also stated, "That minister will then be dismissed if not recalled." [1]

(*d*) The ceremonial of departure is similar to that of reception. (1) The diplomat seeks an interview according to the method outlined in the ceremonial of reception, in order to present his letter of recall. (2) In case of remoteness from the seat of government the agent may, if necessary, take leave of the sovereign by letter, forwarding to the sovereign his letter of recall. (3) It very often happens that a diplomatic agent presents his successor at the time of his own departure. (4) In case of change of title the diplomat follows the ceremonial of departure in one capacity with that of arrival in his new capacity. (5) It is understood that the agent, after the formal close of his mission, will depart with convenient speed, and until the expiration of such period he enjoys diplomatic immunities.

Ceremonial of departure.

81. Diplomatic Practice of the United States [2]

Some of the minor points of procedure and functions may be seen by the study of the customs and rules of any large state, as in the United States. The organization changes frequently to meet new needs.

(*a*) Official communications involving international relations and general international negotiations are within the exclusive province of the Department of State, at the head of which stands the Secretary of State. In other states this department is commonly called the Department of Foreign Affairs, and its chief is the Minister or Secretary for Foreign Affairs, and was so designated in the United States from 1781

[1] 4 Moore, § 639.

[2] Concise bibliography, Hart, "Foundations of American Foreign Policy," pp. 241–293.

to 1789. The Department of State of the United States, however, performs many functions not strictly within a Department of Foreign Affairs. The functions are ordinarily shown by such titles as the following: Divisions, for Western European, Mexican Affairs, etc.; for Political and Economic Information, Publications, etc.; and various Bureaus, as Diplomatic, Consular, Appointments, Archives, etc.

(*b*) The Constitution provides that, "In all cases affecting ambassadors, other public ministers, and consuls," the Supreme Court has original jurisdiction.[1]

(*c*) A diplomatic agent cannot, without consent of Congress, "accept of any present, emolument, office, or title of any kind whatever from any king, prince, or foreign state."[2] This provision does not, however, prevent the rendering of a friendly service to a foreign power, and it may be proper for him, having first obtained permission from the Department of State, to accede to the request to discharge temporarily the duties of a diplomatic agent of any other state.[3]

(*d*) In case of revolution a diplomatic agent may extend protection to the subjects of other friendly powers left for the time without a representative.[4] In neither this nor in the preceding case does the United States become responsible for the acts of its diplomatic representative in so far as he is acting as agent of the other state or states.

(*e*) "It is forbidden to diplomatic officers to participate in any manner in the political concerns of the country of their residence; and they are directed especially to refrain from public expressions of opinion upon local political or other questions arising within their jurisdiction. It is deemed advisable to extend similar prohibition against public addresses, unless upon exceptional festal occasions, in the country of official residence. Even upon such occasions any reference to political

[1] U. S. Constitution, Art. III, § 2, 2.
[2] U. S. Constitution, Art. I, § 9, Ch. 8.
[3] 4 Moore, § 653.
[4] *Ibid.*

issues, pending in the United States or elsewhere, should be carefully avoided." [1] A diplomatic agent is forbidden to recommend any person for office under the government to which he is accredited.[2] The diplomatic agent should not become the agent to prosecute private claims of citizens.[3] The diplomatic agent should not retain any copy of the archives, nor allow the publication of any official document, without authorization of the Department of State. The Department in general disapproves of residence of the agent elsewhere than at the capital of the receiving state.

(*f*) Joint action with the diplomatic agents of other powers at a foreign court is deprecated, although conferences resulting in a common understanding in cases of emergency are considered desirable.[4]

(*g*) It is permitted that the diplomatic agent of the United States wear the uniform and bear the title of the rank attained in the volunteer service of the Army of the United States during the rebellion.[5] It is prohibited by a later statute to wear " any uniform or official costume not previously authorized by Congress." [6] This has been interpreted as applying to dress denoting rank, but not to the prescribed court dress of certain capitals; [7] and " diplomatic officers are permitted to wear upon occasions of ceremony the dress which local usage prescribes as appropriate to the hour and place." [8]

(*h*) The United States has never been liberal in compensating diplomatic agents for their services. In 1784 the salary of the highest grade was fixed at nine thousand dollars, and it has scarcely been doubled since that time. Other states of equal dignity provide far more liberally for their representatives.

[1] Instructions to Diplomatic Officers, U. S., 1897, §§ 68, 69.
[2] U. S. Comp. Sts. § 3199. [3] 4 Moore, § 654. [4] 4 Moore, § 652.
[5] 4 U. S. Comp. Sts. § 1934. [6] U. S. Rev. Sts. § 1688.
[7] Schuyler, " Amer. Dip.," 144.
[8] Instructions to Diplomatic Officers, U. S., § 67.

The whole matter of diplomatic agents has been the subject of numerous statutes.[1]

82. Consuls

(*a*) Historically the office of consul preceded that of ambassador. The merchants of different states had dealings with one another long before the states, as such, entered into negotiations. The Egyptians, apparently as early as the fourteenth century B.C., intrusted the trial of certain maritime cases to a designated priest. The Mediterranean merchants appealed to the *judicium mercatorium et maritimum* in the sixth century B.C. The Greek *proxenos* performed some consular functions. Rome later had similar public servants. The consular system, however, did not develop during the long period of decay of the Roman Empire. In the days of the Crusades, the merchants settled in the coast cities of the Mediterranean. Quarters of the cities came practically under the jurisdiction of the foreign occupants. The consuls, probably at first chosen by the merchants, exercised this jurisdiction, under which the law of the state of the origin of the merchants was regarded as binding. Their functions were somewhat similar to those exercised in some Eastern states at the present time. As soon as conditions became more settled, the states of the consuls gradually assumed control of these consular offices. The laws of Oléron, Amalfi, Wisby, the Consolato del Mare, and the early Lex Rhodia show that many of the consular functions were recognized in and even before the Middle Ages. The office of consul seems to have been quite well established by the year 1200. The Hanseatic League in the fourteenth century had magistrates in many cities entitled *aldermen*, who were performing functions similar to those of the consuls of the Mediterranean.[2] England began to send consuls

History

[1] 4 U. S. Comp. Sts. §§ 3116–3212.

[2] Nys, "Les origines du droit international," "Le Commerce," p. 286.

in the fifteenth century; the system rapidly spread, and the powers and functions of consuls were wide. From this time, with the growth of the practice of sending resident ambassadors, the extent of the consular duties was gradually lessened. The diplomatic functions formerly in the charge of the consuls were intrusted to the ambassadors, and other functions of the consuls were reduced by making them the representatives of the business interests of the subjects of the state in whose service they were, rather than of the interests of the state as such.[1] In Europe, from the middle of the seventeenth century, when the responsibility of states to each other became more fully recognized, and government became more settled, the extraterritorial jurisdiction of consuls was no longer necessary. The growth of commerce among the nations has increased the duties of the consul. The improved means of communication, telegraphic and other, has relieved both consuls and ambassadors of the responsibility of deciding, without advice from the home government, many questions of serious nature.

(*b*) The rank of consuls is a matter of domestic law, and each state may determine for its own officers the grade and honors attaching thereto in the way of salutes, precedence among its domestic officials, etc. There is no international agreement in regard to consuls similar to that of 1815–1818 in regard to diplomatic agents.

Rank of consuls a matter of domestic law.

The United States differentiates the classified consular service into consuls-general, consuls, vice-consuls *de carrière*, consular assistants and student interpreters. Other consular officers are in the unclassified service. The full officers are consuls-general and consuls. Consular agents and vice-consuls are subordinate to the full officers. The former exercise functions at posts other than those at which full officers are located, and the latter exercise functions within the limits of a principal con-

[1] Lawrence, "Commentaire sur Wheaton," IV, p. 6.

sulate, or as substitutes in the temporary absence of the full officer.

Consuls-general ordinarily have a supervisory jurisdiction of the consuls within the neighborhood of their consulate, though sometimes they have no supervisory jurisdiction. Some supervisory jurisdiction is often exercised by the diplomatic agent accredited to the same state. Legislation of the United States has provided for "seven inspectors of consulates, to be designated and commissioned as consuls-general at large" to "make such inspections of consular offices as the Secretary of State shall direct." "Each consular office shall be inspected at least once in every two years."

Most states have consuls-general, consuls, vice-consuls, consular agents, sometimes also consular students.

(*c*) The nomination of consuls is an attribute of a sovereign state. They may be chosen either from among its own citizens or from those of the foreign state. Consuls chosen from the citizens of the state to which they are accredited exercise only in part the full consular functions, the limit of the functions being determined by the laws of the accrediting state and by the laws of the receiving state. Some states refuse to receive their own citizens as consuls; others do not accredit foreigners as consuls.

Nomination and reception of consuls.

The commission or patent by which a consul-general or consul is always appointed is transmitted to the diplomatic representative of the appointing state in the state to which the consul is sent, with the request that he apply to the proper authority for an *exequatur*, by which the consul is officially recognized and guaranteed such prerogatives and immunities as are attached to his office. The vice-consul is usually appointed by patent, though he may be nominated by his superior, and is recognized by granting of an *exequatur*. The *exequatur* may be revoked for serious cause, though the more usual way is to ask the recall of a consul who is not satisfactory to a state. The *exequatur*

may be refused for cause. It is usually issued by the head of the state. If the form of government in the receiving state or in the accrediting state changes, it is customary to request a new *exequatur*.

(FORM OF)

FULL PRESIDENTIAL EXEQUATUR

.....

President of the United States of America.

To all to whom it may concern:

Satisfactory evidence having been exhibited to me that.....
has been appointed.....
I do hereby recognize him as such, and declare him free to exercise and enjoy such functions, powers, and privileges as are allowed to.....
.....

In Testimony whereof, I have caused these Letters to be made Patent, and the Seal of the United States to be hereunto affixed.

[SEAL OF THE UNITED STATES]

Given under my hand at the City of Washington the.....day of....., A.D. 19...., and of the Independence of the United States of America, the.....

By the President, ...

.....

Secretary of State

(*d*) The consul, as the officer representing particularly the commercial and business interests of the state from which he comes, and in a minor degree the other individual interests, has a great variety of functions. His functions are in general such as affect only indirectly the state in which he resides. He is not, like the diplomatic agent, directly concerned with affairs of state; he has no representative character, though in effect he is often the local representative of the diplomatic agent accredited to the state.

Varied function of the consuls.

The functions of a consul are largely matters determined by

custom, treaty stipulation, and by special provisions of his *exequatur*. Within these limits domestic law of the accrediting state determines the consul's functions. (1) In general the consul has many duties in connection with the *commercial interests* of the subjects of the state which he serves. These duties extend both to maritime and land commerce. The consul is to care that the provisions of commercial treaties are observed, that proper invoices of goods are submitted, and that shipment is in accord with the regulations of the state which he serves. He is to furnish such reports in regard to commercial and economic conditions as are required. These reports often involve many subjects only indirectly related to trade and commerce. (2) The consul has many duties relating to the *maritime service* of the state which accredits him. This usually includes such supervision of merchant vessels as the domestic law of his state may grant to him, together with that accorded by custom. His office is a place of deposit of a ship's papers while the ship remains in port. When necessary he may supervise the shipment, wages, relief, transportation, and discharge of seamen, the reclaiming of deserters, the care of the effects of deceased seamen, in some states the adjudication of disputes between masters, officers, and crews, and if necessary he may intervene in cases of mutiny or insubordination. In case of wrecked vessels the consul is usually left considerable latitude in his action. The consul may also authenticate the bill of sale of a foreign vessel to the subject of the state which accredits him. This authentication entitles the vessel to the protection of the consul's state. To the consul may also be intrusted other duties by treaties or by custom of given states. (3) The consul *represents* the *interests of the citizens* of the state in whose service he is, in matters of authentication of acts under seal, in administration of the property of citizens within his district, in taking charge of effects of deceased citizens, in arbitration of disputes voluntarily submitted to him, visé of

passports, and minor services. (4) The consul *furnishes* to the state which he represents *information* upon a great variety of subjects particularly relating to commercial, economic, and local political affairs, the conditions of navigation, and general hydrographic information. Besides this he is expected to keep his state informed of the events of interest transpiring within his district.[1]

As Hall says: "In the performance of these and similar duties the action of a consul is evidently not international. He is an officer of his state to whom are entrusted special functions which can be carried out in a foreign country without interfering with its jurisdiction. His international action does not extend beyond the unofficial employment of such influence as he may possess, through the fact of his being an official and through his personal character, to assist compatriots who may be in need of his help with the authorities of the country. If he considers it necessary that formal representations shall be made to its government as to treatment experienced by them or other matters concerning them, the step ought in strictness to be taken through the resident diplomatic agent of his state, — he not having himself a recognized right to make such communications." [2] In late years there has been in the consular conventions between different states a tendency to extend to consuls the right of complaint to the local authorities in case "of any infraction of the treaties or conventions existing between the states," and "if the complaint should not be satisfactorily redressed, the consular officer, in the absence of the diplomatic agent of his country, may apply directly to the government of the country where he resides." [3]

[1] Stowell, E. C., *Le Consul*, p. 15. [2] Hall, p. 326.

[3] See Treaties: United States and Colombia (New Granada), 1850; United States and France, 1853; United States and Austria, 1870; United States and Germany, 1871; Austria and Portugal, 1873; Germany and Russia, 1874; France and Russia, 1874; United States and Italy, 1878; Portugal and Belgium, 1880; United States and Sweden, 1910, and others.

(*e*) In some of the Eastern and non-Christian states consuls have special powers and functions in addition to the ordinary powers and functions. The extent of the powers varies, and is usually determined by treaty. With the advance of civilization these special functions are withdrawn, as by the Treaty of the United States with Japan, November 22, 1894,[1] the jurisdiction of the consular courts of the United States in Japan came to an end July 17, 1899.

Special powers in Eastern states.

In general, in Mohammedan and non-Christian states, treaty stipulations secure to the consuls of Western states the right of exercising extensive criminal and civil jurisdiction in cases involving citizens of their own and the Eastern states, or in cases involving citizens of their own and other Western states.[2] In some of the Eastern states the consuls have exclusive jurisdiction over all cases to which citizens of their states are parties;[3] in others the cases involving citizens of the Eastern and Western states are tried in the court of the defendant in the presence of the "authorized official of the plaintiff's nationality," who may enter protest if the proceedings are not in accord with justice,[4] while in certain states and for some cases mixed courts are constituted. Certain Western states in their domestic laws make provisions for appeal from the decision of the consular court to specified authorities, as to the diplomatic agent or to some domestic tribunal.

This jurisdiction is exceptional, furnishes no precedents for international law, tends to become more restricted, and will doubtless gradually disappear.

(*f*) The privileges and immunities vary according to the states and from the fact that a consul may be (1) a citizen of the state in which he exercises his consular functions, (2) a

[1] 29 U. S. Sts. at Large, 848.
[2] See § 66 for extent of jurisdiction.
[3] U. S. Treaty with Borneo, June 23, 1850, Art. IX, I Treaties, 130.
[4] U. S. Treaty with China, Nov. 17, 1880, Art. IV, I Treaties, 239.

domiciled alien, (3) an alien engaged in business or some other occupation in the state where he exercises his functions, or (4) a citizen of the accrediting state engaged exclusively upon consular business.[1] It is, however, necessary that the state which grants an *exequatur* to, or receives as consul a person from, one of the first three classes, grant to such person a measure of privilege and immunity consistent with the free performance of his consular duties.

Privileges and immunities.

Each consul has the privilege of placing above the door of his house the arms of the state which he serves, generally also of flying its flag. The archives and official property are inviolable.

In the case of a consul not a citizen of the receiving state and engaged exclusively in consular business the following exemptions are usually conceded by custom and often by treaty: exemption from arrest except on a criminal charge, when he may be punished by local laws or sent home for trial; exemption from witness duty, though testimony may be taken in writing; exemption from taxation; exemption from military charges and service. It is not, however, conceded that the consular residence may be used as an asylum.

The consul of the third class, who, though an alien to the receiving state, engages in business other than consular duties, is subject to all local laws governing similarly circumstanced foreigners, except when in the performance of his functions. His consular effects must be kept distinct from those appertaining to his business capacity, which last are under local law.

The domiciled alien exercising consular functions is subject to local law as others similarly circumstanced, which, in some states, may involve considerable obligations. The freedom from local restrictions sufficient for the convenient performance of his consular duties is implied in the grant of the *exequatur*.

[1] Lehr, § 1236 ff.

The reception of a citizen of a state as a consular representative of a foreign state does not confer upon him the personal privileges and immunities of any of the other classes, but only the immunities attaching to the office itself, and absolutely necessary for the performance of its duties, as the right to use the arms above the office door, the inviolability of archives, and respect for his authority while in the performance of his functions.

In some of the Eastern states and in some of the non-Christian and semicivilized states consuls are entirely exempt from local jurisdiction, enjoying exemptions similar to those of diplomatic agents.

In time of war the house of the consul is, when flying the flag of the state which he serves, specially protected, and liable to injury only in case of urgent military necessity. Consuls do not necessarily withdraw because of hostilities with the accrediting state.[1]

In general, the consul, by virtue of his public office, is entitled to more respect than a simple citizen, or, as Heffter puts it, "consuls are entitled to that measure of inviolability which will enable them to exercise their consular functions without personal inconvenience." [2]

Termination of consular office.

(*g*) The consular office may be vacated by a given occupant, (1) by death, (2) by recall, (3) by expiration of his term of service, (4) by revocation of his *exequatur*. This last cause is the only one needing attention. The *exequatur* may be revoked by the state issuing it, if the conduct of the holder be displeasing to the state. The state issuing the *exequatur* is sole judge. This does not necessarily imply any discourtesy to the accrediting state, as the consul does not represent the sovereignty of the state. It is customary, however, to give the accrediting state an opportunity to recall its consul. *Exequaturs* have, on several

[1] "De Clerq et de Vallat." I, pp. 106, 107. [2] § 244.

occasions, been withdrawn from consuls who have directly or indirectly aided the enemies of the receiving state, or have given offense by their participation in the public affairs of the receiving state. Consequently consuls are usually officially advised to refrain so far as possible from expressions of their opinions upon public affairs, either of the receiving or sending state.

(*h*) Formerly the United States consuls were usually changed on the election of a new President. It was found that such a policy was detrimental to the interests of the United States, for often the four years of experience would be an excellent preparation for subsequent service and a reason why the consul should be retained rather than allowed to withdraw.

Appointment of consuls

With a view to the promotion of the efficiency and permanency of the consular service, an Act of Congress of April 5, 1906, made it practicable for the President of the United States to extend to the consular service the regulations governing selections under the civil service laws. Since 1906, the American consular service has tended to become, as in many states, a career.

OUTLINE OF CHAPTER XIV

TREATIES

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88. THE INTERPRETATION OF TREATIES.
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(*d*) Not effective when the execution of conditions is impossible or contrary to the principles of law or morality.
(*e*) By renunciation of advantages and rights secured by a treaty.
(*f*) By a declaration of war.
(*g*) When the test of voidability applies.
(*h*) By act of denunciation.

CHAPTER XIV

TREATIES

83. Definition of a Treaty

A TREATY is an agreement, generally in writing, and always in conformity with law, between two or more states or political unities having state capacity. A treaty may establish, modify, or terminate obligations. These obligations must be such as are legally within the capacity of the states concerned to negotiate. As distinguished from other forms of international agreement, a treaty is usually concerned with matters of high state importance, with a considerable number of questions, or with matters involving several states.

Separate articles are clauses attached to a treaty after ratification, and to be interpreted with reference to the whole.

84. Other Forms of International Agreements

Besides the treaty, which is the most formal international agreement, there may be various other methods of expressing the terms of international agreements. The importance of the matter contained in the various documents is not necessarily in proportion to their formality.

The terms " convention " and " treaty " are often used interchangeably, though strictly the scope of a convention is less broad, and usually applies to some specific subject, as to the regulation of commerce, navigation, consular service, postal service, naturalization, extradition, boundaries, etc. The terms below are often used loosely in practice.

(*a*) A protocol, or *procès verbal*, is usually in the form of official minutes, giving the conclusions of an international conference and signed at the end of each session by the negotiators. This does not require ratification by the sovereign as in the case of treaties and conventions, though it may be binding upon the good faith of the states concerned. Ordinarily the persons signing the protocol have been duly authorized by their respective states in advance. The term "protocol" is sometimes applied to the preliminary draft of an agreement between two or more states as to the agreements entered into by negotiators in preparation of a more formal document, such as a treaty or convention.[1]

Protocol.

(*b*) Declarations are often documents containing reciprocal agreements of states, as in granting equal privileges in matters of trade marks, copyrights, etc., to the citizens of each state. The term is used for the documents, (1) which outline the policy or course of conduct which one or more states propose to pursue under certain circumstances,[2] (2) which enunciate the principles adopted, or (3) which set forth the reasons justifying a given act.

Declarations.

(*c*) The terms "memoranda" and "mémoires" are used to indicate the documents in which the principles entering an international discussion are set forth, together with the probable conclusions. These documents may be considered by the proper authorities, *e.g.* may be sent to the foreign secretaries of the states concerned, and *contre-mémoires* may be submitted. These documents are generally unsigned.

Memoranda.

(*d*) Besides the above, there may be in diplomatic negotiations letters between the agents, in which the use of the first

[1] For the protocol between the United States and Spain as to terms of peace, see 2 Treaties, 1688, 1695; 30 U. S. Sts. at Large, 1742.

[2] See Declaration of Paris, Appendix p. xxxi.

or second person is common, and notes which are more formal and usually in the third person. These letters, if made public, may have much force, as in the case of the collective note of the powers commonly called the "Andrassy note," by which the Powers of Europe in 1875 held that in Turkey "reform must be adopted to put a stop to a disastrous and bloody contest."

Letters and notes.

(*e*) When representatives of states not properly commissioned for the purpose, or exceeding the limits of their authority, enter into agreements, their acts are called treaties *sub spe rati* or *sponsions*. Such agreements require ratification by the state. This ratification may be explicit in the usual form, or tacit, when the state governs its actions by the agreements.

Sponsions.

(*f*) Of the nature of treaties are cartels, which are agreements made between belligerents, usually mutual, regulating intercourse during war. These may apply to exchange of prisoners, postal and telegraphic communications, customs, and similar subjects. These documents are less formal than conventions, usually negotiated by agents specially authorized, and do not require ratification, though fully obligatory upon the states parties to the agreement.[1] Here also may be named the suspension of arms, which the chief of an army or navy may enter into as an agreement for the regulation or cessation of hostilities within a limited area for a short time and for military ends. When such agreements are for the cessation of hostilities in general, or for a considerable time, they receive the name of armistices or truces.[2] These are sometimes called conventions with the enemy. These last do not imply international negotiation.

Cartels.

[1] Wheat. D., §§ 254, 344.

[2] The armistice of November 11, 1918, between the allied and associated Powers and Germany embodied many provisions usually reserved for the treaty of peace.

(*g*) The term "compromis" is now generally used for the agreement by which, in a dispute to be presented to a court of arbitration or international court, the issue is defined, the time and manner of appointing the arbitrators, the procedure, etc., are set forth.

Compromis.

NOTE. Agreements concluded between states and private individuals or corporations have not an international character, and do not come within the domain of international law. Such agreements may include: —

1. Contracts with individuals or corporations for a loan, colonization, developing a country, etc.
2. Agreements between princes in regard to succession, etc.
3. Concordats signed by the Pope as such and not as a secular prince.

85. The Negotiation of Treaties

The negotiation of treaties includes, (*a*) the international agreement upon the general terms, (*b*) the drafting of the terms, (*c*) the signing, and (*d*) the ratification.

(*a*) The first step preparatory to the agreement is the submission of proof that the parties entering into the negotiations are duly qualified and authorized.[1] As the sovereigns themselves do not now in person negotiate treaties,[2] it is customary for those who are to conduct such negotiations to be authorized by a commission generally known as *full power*. The negotiators first present and exchange their *full powers*. They may be somewhat limited in their action by instructions.[3] Often it is the diplomatic representatives who negotiate with the proper authorities of the state to which they are accredited. The negotiations are sometimes written, sometimes verbal, and are preserved in the *procès verbaux*. In case the negotiations are for any reason

The agreement upon terms of the treaty.

[1] Butler, "Treaty-making Power," pp. 4 ff.
[2] The Holy Alliance of 1815 was signed by three sovereigns.
[3] See Sec. 76.

discontinued before the drafting of the terms of the agreement, it is customary to state the circumstances leading to this act in a protocol signed by all the negotiators. Sometimes this takes the name of a manifest or of a declaration.

(*b*) The draft of the treaty is usually, though not necessarily, of a uniform style. Many early treaties opened with an invocation to Deity. This is not the custom followed by the United States, however. The general form is to specify the sovereigns of the contracting states, the purpose of the agreement, and the names of the negotiators, with their powers. This constitutes the preamble. Then follow in separate articles the agreements entered into forming the body of the treaty, the conditions of ratification, the number of copies, the place of the negotiation, the signatures and seals of the negotiators. Sometimes other articles or declarations [1] are annexed or added, with a view to defining, explaining, or limiting words or clauses used in the body of the treaty. In setting forth conditions of ratification, etc., the same formula is ordinarily followed as in the portion of the main treaty subsequent to the body.

The draft usually of a uniform style.

When several copies are signed, the order of the states parties to the treaty, and of the agents negotiating it, varies in the different copies. The copy transmitted to a given state party to the treaty contains the name of that state and of its agents in the first place, so far as possible. Each negotiator signs in the first place the copy of the treaty to be transmitted to his own state, and if the agents of more than one other state sign the treaty, they sign in alphabetical order of their states according to the original language of the convention. This is known as the principle of the alternat.

The following is the beginning and end of the Treaty of Washington relative to the Alabama Claims, etc., including the President's proclamation thereof: [2] —

[1] The Declaration of Paris, 1856, Appendix, p. xxxi.

[2] 17 U. S. Sts. at Large, 863; 1 Treaties of U. S., 478.

"BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

"A Proclamation

"Whereas a treaty, between the United States of America and her Majesty the Queen of the United Kingdom of Great Britain and Ireland, concerning the settlement of all causes of difference between the two countries, was concluded and signed at Washington by the high commissioners and plenipotentiaries of the respective governments on the eighth day of May last; which treaty is word for word, as follows: —

"'The United States of America and her Britannic Majesty, being desirous to provide for an amicable settlement of all causes of difference between the two countries, have for that purpose appointed their respective plenipotentiaries, that is to say: The President of the United States has appointed, on the part of the United States, as Commissioners in a Joint High Commission and Plenipotentiaries [here follow the names]; and her Britannic Majesty, on her part, has appointed as her High Commissioners and Plenipotentiaries [here follow the names].

"'And the said plenipotentiaries, after having exchanged their full powers, which were found to be in due and proper form, have agreed to and concluded the following articles: —

[Here follow 42 articles.]

Article XLIII

"'The present treaty shall be duly ratified by the President of the United States of America, by and with the advice and consent of the Senate thereof, and by her Britannic Majesty; and the ratifications shall be exchanged either at Washington or at London within six months from the date hereof, or earlier if possible.

"'In faith whereof, we, the respective plenipotentiaries, have signed this treaty and have hereunto affixed our seals.

"'Done in duplicate at Washington the eighth day of May, in the year of our Lord one thousand eight hundred and seventy-one.'

[Here follow the seals and signatures.]

"And whereas the said treaty has been duly ratified on both parts, and the respective ratifications of the same were exchanged in the city of London, on the seventeenth day of June, 1871, by Robert C. Schenck, Envoy Extraordinary and Minister Plenipotentiary of the United States, and Earl Granville, her Majesty's Principal Secretary of State for Foreign Affairs, on the part of their respective governments:

"Now, therefore, be it known that I, Ulysses S. Grant, President of the United States of America, have caused the said treaty to be made public, to the end that the same, and every clause and article thereof, may be observed and fulfilled with good faith by the United States and the citizens thereof.

"In witness whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

"Done at the City of Washington this fourth day of July, in the year of our Lord one thousand eight hundred and seventy-one, and of the Independence of the United States the ninety-sixth.

"U. S. GRANT.

"By the President:

"HAMILTON FISH, *Secretary of State.*"

There is no diplomatic language, though various languages have from time to time been more commonly used. In early treaties and diplomatic works Latin was very common, and it was used so late as the Treaty of Utrecht in 1713. Spanish prevailed for some years toward the end of the fifteenth century. From the days of Louis XIV, when the French particularly became the court language, it was widely used in congresses and treaties. Frequently, when used, there was inserted in the treaties provision that the use of French should not be taken as a precedent. During the nineteenth century the use of French has been very common, as in the acts of the Congress of Vienna, 1815; Aix-la-Chapelle, 1818; Paris, 1856; Berlin, 1878 and 1885; Brussels, 1890. Even other states of Europe, in making treaties with Asiatic and African states

have agreed upon French or English as the authoritative text for both states. In some of the treaties of the United States and the Ottoman Porte, the French language was used.

In recent years English has come to be widely used in diplomatic intercourse. The English and French texts of the Treaty of Versailles of June 28, 1919, were "both authentic" (Article 440) and both English and French were official languages at the Conference on Limitation of Armament, Washington, 1921–1922.

It is customary, when the treaty is between states having different official languages, to arrange for versions in both languages in parallel columns, placing at the left the version in the language of the state to which the treaty is to be transmitted.

(*c*) In signing the treaty each representative signs and seals in the first place the copy to be sent to his own state. The order of the other signatures may be by lot or in the alphabetical order of the states represented. The signing of the treaty indicates the completion of the agreement between those commissioned in behalf of the states concerned. This does not irrevocably bind the states which the signers represent, though the fact that its representative has signed a treaty is a reason for ratification which cannot be set aside except for weighty cause. Signing is *ad referendum* in case of many states where ratification by a legislative body, as by the Senate in the United States, is required.

Signatures and seals.

(*d*) Ratification is the acceptance by the state of the terms of the treaty which has been agreed upon by its legally qualified agent. The exchange of ratifications is usually provided for in a special clause, *e.g.* "The present treaty shall be ratified, and the ratifications exchanged at . . . as speedily as possible." By this clause the state reserves to itself the right to examine the conditions before entering into the agreement. At the

Ratification, or acceptance of the treaty by the state.

present time it is held that even when not expressed, the "reserve clause" is understood.

The ratification conforms to the domestic laws of each state. Ordinarily it is in the form of an act duly signed and sealed by the head of the state. In the act of ratification the text of the treaty may be reproduced entire, or merely the title, preamble, the first and last articles of the body of the treaty, the concluding clauses following the last article, the date, and the names of the plenipotentiaries.

In many states prior approval of the treaty by some legislative body is necessary. In the United States the Constitution provides that the President "shall have power by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur." [1]

In the United States it has frequently happened that the Senate has not approved of treaties, and they have therefore failed of ratification. This was the fate of the Fishery Treaty with Great Britain in 1888 and of the Treaty of Versailles of 1919.

Refusal to ratify.

The ratification may be refused for sufficient reason. Each state must decide for itself what is sufficient reason. The following have been offered at various times as valid reasons for refusal of ratification: (1) Error in points essential to the agreement, (2) the introduction of matters of which the instructions of the plenipotentiaries do not give them power to treat, (3) clauses contrary to the public law of either of the states, (4) a change in the circumstances making the fulfillment of the stipulations unreasonable, (5) the introduction of conditions impossible of fulfillment, (6) the failure to meet the approval of the political authority whose approval is necessary to give the treaty effect, (7) the lack of proper credentials on the part of the negotiators or the lack of freedom in negotiating.

[1] Art. II, § 2, 2.

The exchange of ratifications is often a solemn, *i.e.* highly formal, ceremony by which parties to the treaty or convention guarantee to each other the execution of its terms. As many copies of the act of ratification are prepared by each state as there are states parties to the treaty. When the representatives of the states assemble for the exchange of ratifications, they submit them to each other. These are carefully compared, and if found in correct form, they make the exchange and draw up a *procès verbal* of the fact, making as many copies of the *procès verbal* as there are parties to the treaty. At this time also a date for putting into operation the provisions of the treaty may be fixed. Sometimes clauses explanatory of words, phrases, etc., in the body of the treaty are agreed upon. Such action usually takes the form of a special *procès verbal* or protocol.

Exchange of ratifications.

Unless there is a stipulation as to the time when a treaty becomes effective, it is binding upon the signatory states from the date of signing, provided it is subsequently ratified.

A state may assume a more or less close relation to the agreements contained in treaties made by other states, by measures less formal than ratification.[1] These measures are commonly classed as acts of (1) *approbation*, by which a state without becoming in any way a party to the treaty assumes a favorable attitude toward its provisions; (2) *adhesion*, by which a state announces its intention to abide by the principles of a given treaty without becoming party to it; and (3) *accession*, by which a state becomes a party to a treaty which has already been agreed upon by other states.

Approbation, adhesion, accession.

NOTE. After the completion of the negotiation it is customary to promulgate and publish the treaty or convention. Both these acts are matters of local rather than international law. The

[1] Roxburgh, International Conventions and Third States, p. 45.

promulgation is the announcement by the chief of the state that the treaty or convention has been made, and the *publication* is the official announcement of the contents of the treaty or convention. See p. 208.

86. Validity of Treaties

Four conditions are very generally recognized as essential to the validity of a treaty.

(*a*) The parties to the treaty must have the international capacity to contract, *i.e.* ordinarily they must be states.

Four essential conditions.

(*b*) The agents acting for the state must be duly authorized, *i.e.* the plenipotentiaries must act within their powers.

(*c*) There must be freedom of consent in the agreements between the states. This does not imply that force, as by war, reprisals, or otherwise, may not be used in bringing about a condition of affairs which may lead a state, without parting with its independence, to make such sacrifices as may be necessary to put an end thereto. No constraint can be put upon the negotiators of the treaty by threats of personal violence, or in any way to prohibit their free action, without invalidating their acts. There is no freedom of consent when the agreement is reached through fraud of either party, and treaties so obtained are not valid.

(*d*) The treaties must be in conformity to law, as embodied in the generally recognized principles of international law and the established usage of states. States could not by treaty appropriate the open sea, protect the slave trade, partition other states, deprive subjects of essential rights of humanity, or enter into other agreements that could not be internationally obligatory.

87. Classification of Treaties

(*a*) Treaties have been variously classified, but the classifications serve no great purpose. The most common classification

is clearly set forth by Calvo. As regards duration, treaties may be (1) transitory, or (2) permanent or perpetual; as regards nature, (1) personal, relating to the sovereign, or (2) real, relating to things and not dependent on the sovereign person; as regards effects, (1) equal or (2) unequal, or according to other effects, simple or conditional, definitive or preliminary, principal or accessory, etc.; as regards objects, (1) general or (2) special.[1] In a narrower sense treaties may be divided into many classes, as political, economic, guaranty, surety, neutrality, alliance, friendship, boundary, cession, exchange, jurisdiction, extradition, commerce, navigation, peace, etc., and conventions relating to property of various kinds, including literary and artistic, to post and telegraph, etc. Most of these classes are sufficiently described by their titles.

Various methods of classification.

(*b*) A treaty of guaranty is an engagement by which a state agrees to secure another in the possession of certain specified rights, as in the exercise of a certain form of government, in the free exercise of authority within its dominions, in freedom from attack, in the free navigation of specified rivers, in the exercise of neutrality, etc. In 1831 and 1839, by the Treaties of London, the independence and neutrality of Belgium were guaranteed, and in the Treaty of 1832 the affairs in Greece were adjusted under guaranty. The Treaty of Paris, 1856, guarantees "the independence and the integrity of the Ottoman Empire." The Anglo-Japanese treaty of 1902 constituted a mutual guarantee in certain Far Eastern affairs.[2] When the guaranteeing state is not only bound to use its best efforts to secure the fulfillment of the treaty stipulations, but to make good the conditions agreed upon in the treaty provided one of the principals fails to meet its obligations, the treaty is not merely one of guaranty,

Treaty of guaranty.

[1] Calvo, §§ 643–668.

[2] Terminated by Four Power Pact of December 13, 1921.

but also a treaty of surety. This sometimes happens in case of loans.[1]

(*c*) Agreements of states to act together for specific or general objects constitute treaties of alliance. The nature of these treaties of alliance varies with the terms. They may be defensive, offensive, equal, unequal, general, special, permanent, temporary, etc., or may combine several of these characteristics.

Treaty of alliance.

88. Interpretation of Treaties

Sometimes clauses interpreting treaties are discussed and adopted by the states signing a treaty. These acts may take the form of notes, protocols, declarations, etc. The dispatch of the French ambassador at London, August 9, 1870, to the foreign secretary interprets certain clauses of the treaty guaranteeing the neutrality of Belgium. In cases where no preliminary agreement in regard to interpretation is made, there are certain general principles of interpretation which are ordinarily accepted. Many treatises follow closely the chapters of Grotius and Vattel upon this subject.[2]

(*a*) The rules usually accepted are: (1) Words of the treaty are to be taken in the ordinary and reasonable sense, as when elsewhere used under similar conditions. (2) If the words have different meanings in the different states, the treaty should so far as possible be construed so as to accord with the meaning of the words in the states which accepted the conditions. (3) In default of a plain meaning, the spirit of the treaty or a reasonable meaning should prevail. (4) Unless the fundamental rights of states are expressly the subject of the agreement, these rights are not involved. (5) That which is clearly granted by the treaty carries with it what is necessary for its realization.

Rules for interpretation.

[1] Wilson, Neutralization, 4 Yale Review, 474.

[2] Grotius, II, 16; Vattel, II, 17

(*b*) In the cases of conflicting clauses in a single treaty or in case of conflicting treaties, the general rules are: (1) Special clauses prevail against general clauses; prohibitory against permissive, unless the prohibitory is general and the permissive special; of two prohibitory clauses, the one more distinctly mandatory prevails; of two similar obligatory clauses the state in whose favor the obligation runs may choose which shall be observed. (2) In case of conflict in treaties between the same states the later prevails; in case a later treaty with a third state conflicts with an earlier treaty with other states, the earlier treaty prevails.[1]

Cases of conflicting clauses.

(*c*) "The most favored nation" clause is now common in treaties of commercial nature. This clause ordinarily binds the state to grant to its co-signer all the privileges similarly granted to all other states, and such as shall be granted under subsequent treaties. When privileges are granted by one state in exchange for privileges granted by another, as in a reciprocal reduction in tariff duties, a third state can lay claim to like reduction only upon fulfillment of like conditions. Under "the most favored nation" clause, Art. VIII, of the Treaty of 1803, between France and the United States, France claimed that its ships were entitled to all the privileges granted to any other nation whether so granted in return for special concessions or not. This position the United States refused to accept, and by Article VII of the treaty of 1831 France renounced the claims.[2]

"The most favored nation" clause.

89. Termination of Treaties[3]

Treaties in general come to an end under the following conditions: —

[1] For the subject of interpretation, see Hall, p. 344 ff.; 2 Phillimore, Pt. V, Ch. VIII; Calvo, §§ 1649–1650; Pradier-Fodéré, §§ 1171–1188.

[2] For discussion of the "most favored nation" clause, see 2 Whart., § 134, also Appendix to Vol. III, p. 888; J. R. Herod, "Favored Nation Treatment," 5 Moore, 257; Crandall, § 172.

[3] Phillipson, Treaties.

(*a*) The complete fulfillment of all the treaty stipulations terminates a treaty.

(*b*) The expiration of the limit of time for which the treaty agreement was made puts an end to the treaty.

(*c*) A treaty may be terminated by express agreement of the parties to it.

(*d*) When a treaty depends upon the execution of conditions contrary to the principles of international law or morality or impossible of performance, it is not effective.

(*e*) A state may renounce the advantages and rights secured under a treaty, *e.g.* England renounced in 1864, the protectorate of the Ionian Islands, which she had held since 1815.

(*f*) A declaration of war may put an end to those treaties which have regard only to conditions of peaceful relations, as treaties of alliance, commerce, navigation, etc., and may suspend treaties which have regard to permanent conditions, as treaties of cession, boundaries, etc. The treaty of peace between China and Japan, May 8, 1895, Article 6, asserts that, " All treaties between Japan and China having come to an end in consequence of the war, China engages, immediately upon the exchange of ratifications of this act, to appoint plenipotentiaries to conclude, with the Japanese plenipotentiaries, a treaty of commerce and navigation, and a convention to regulate frontier intercourse and trade." In the war between the United States and Spain the royal decree issued by Spain, April 23, 1898, Article I, asserts that " The state of war existing between Spain and the United States terminates the treaty of peace and friendship of the 27th October, 1795, the protocol of the 12th January, 1877, and all other agreements, compacts, and conventions that have been in force up to the present between the two countries." The declaration of war also gives special effect to certain treaties and conventions, as to those in regard to care of wounded, neutral commerce, etc.

(*g*) A treaty is voidable when, (1) it is concluded in excess of powers of contracting parties, (2) when it is concluded because of stress of force upon negotiators or because of fraud, (3) when the conditions threaten the self-preservation of the state or its necessary attributes. Hall gives as the test of voidability the following: "Neither party to a contract can make its binding effect dependent at his will upon conditions other than those contemplated at the moment when the contract was entered into, and on the other hand a contract ceases to be binding so soon as anything which formed an implied condition of its obligatory force at the time of its conclusion is essentially altered." [1] The condition *rebus sic stantibus* is always implied.[2]

(*h*) A treaty may be terminated by the simple act of denunciation when this right of denunciation is specified in the treaty itself, or when the treaty is of such a nature as to be voidable by an act of one of the parties. "There can be no question that the breach of a stipulation which is material to the main object, or, if there are several, to one of the main objects, liberates the party other than that committing the breach from the obligations of the contract; but it would be seldom that the infraction of an article which is either disconnected from the main object or is unimportant whether originally or by change of circumstances, with respect to it, could in fairness absolve the other party from performance of his share of the rest of the agreement, though if he had suffered any appreciable harm through the breach he would have a right to exact reparation, and end might be put to the treaty as respects the subject-matter of the broken stipulation." [3]

[1] Hall, p. 360.

[2] Hooper, Adm'r *v.* United States, 22 Ct., Cl. 408.

[3] Hall, p. 362.

OUTLINE OF CHAPTER XV

AMICABLE SETTLEMENT OF DISPUTES AND NON-HOSTILE REDRESS

90. THE AMICABLE SETTLEMENT OF DISPUTES.
   (*a*) By diplomatic negotiation.
   (*b*) By the good offices of a third state.
   (*c*) By the International Commission of Inquiry.
   (*d*) By conferences and congresses.
   (*e*) By League of Nations.
   (*f*) By arbitration.
      (1) The Permanent Court of Arbitration at The Hague.
   (*g*) By the Permanent Court of International Justice.

91. METHODS OF NON-HOSTILE REDRESS.

92. NON-INTERCOURSE AND BOYCOTT.

93. RETORSION.

94. REPRISALS.

95. EMBARGO.

96. PACIFIC BLOCKADE.
   (*a*) Instances of pacific blockades.
   (*b*) Present attitude toward pacific blockade.

CHAPTER XV

AMICABLE SETTLEMENT OF DISPUTES AND NON-HOSTILE REDRESS

90. The Amicable Settlement of Disputes

NOTWITHSTANDING the frequency of wars in recent years, it is generally admitted that in the settlement of international disputes war should be regarded as a last resort. Other means of amicable settlement should be exhausted before any measures of force are tried. Among these amicable means the most common are diplomatic negotiations, the good offices or friendly mediation of a third state, conferences and congresses, and arbitration.[1]

By diplomatic negotiation.

(*a*) The settlement of disputes by diplomatic negotiation follows the ordinary course of diplomatic business, whether committed to regular or special agents. The larger number of disputed questions are settled by diplomatic negotiation.

By the good offices of a third state.

(*b*) In the case of disputes not easily settled by diplomatic negotiations, a third state sometimes offers its good offices as mediator. Its part is not to pass on a disputed question, but to devise a means of settlement. The tender involves the least possible interference in the dispute, and is regarded as a friendly act. Either disputant may decline the tender without offense. One of the disputants may request the tender of good offices or of mediation. Ordinarily good offices extend only to the estab-

[1] Satow, 94; Higgins, Hague Peace Conferences.

lishing of bases of, and the commencement of, the negotiations. The more direct work of carrying on the negotiations is of the nature of mediation. The distinction between these is not always made in practice. Either party may at any time refuse the mediator's offices.

(*c*) The Hague Convention provides for an International Commission of Inquiry to facilitate the solution of differences which diplomacy has not settled "by elucidating the facts by means of an impartial and conscientious investigation." "The Report of the Commission is limited to a statement of facts, and has in no way the character of an award. It leaves the conflicting Powers entire freedom as to the effect to be given to its statement." [1] The provision for this International Commission of Inquiry was put to the test at the time of the Russo-Japanese war, 1904–1905. A Russian fleet proceeding to the East in the early morning of October 22, 1904, fired upon certain British trawlers off the Dogger Banks in the North Sea. The claim was made that the firing was due to the apprehension that the vessels seen in the darkness were Japanese torpedo boats. There was immediately widespread popular clamor in Great Britain for war against Russia. Both states, however, agreed to submit the matter to a Commission of Inquiry to ascertain the facts. The majority of the commission found that the firing was not justifiable.[2] Russia immediately paid compensation. The Commission of Inquiry was also resorted to by Holland and Germany in the case of the Dutch steamer, *Tubantia*, sunk by a torpedo in 1916. The Commission found that the torpedo was "launched by a German submarine."

By the International Commission of Inquiry.

The practicability of the International Commission of Inquiry has become established. As to methods of procedure and in certain other respects it was discovered that improvements might be made in those of the Convention of 1899. The Second

[1] Appendix, p. xlviii.

[2] U. S. For. Rel. 1905, p. 473.

Peace Conference at The Hague in 1907 accordingly made the necessary revision.[1]

(*d*) The settlement of questions liable to give rise to disputes by conferences and congresses is common, and implies a meeting of representatives of the interested parties for consideration of the terms of agreement upon which a question may be adjudicated. The modern tendency is to provide for many international conferences. In general, the conclusions of a congress are more formal and are regarded as having more binding force than those of a conference, though this distinction is not always made. States not directly interested may participate in conferences or congresses, and sometimes as mediators play a leading part.

By conferences and congresses.

(*e*) Since the ratification of the Treaty of Versailles, January 10, 1920, the Covenant of the League of Nations has become binding on many states. Articles XI, XII and XIII of the Covenant particularly provide for settlement of disputes, and since the League of Nations came into existence many differences have been adjusted through its instrumentality; the Aaland Islands controversy was one of the first of these disputes.

By League of Nations.

(*f*) Arbitration involves an agreement between the disputants to submit their differences to some person or persons by whose decision they will abide. Arbitration has been common from early times. In the first Pan-American Conference in 1889 and subsequent similar conferences, the principle of arbitration received earnest support. The Convention for the Pacific Settlement of International Disputes signed at the First Hague Peace Conference, July 29, 1899, provides that "The Signatory Powers undertake to organize a permanent Court of Arbitration, accessible at all times . . . competent for all arbitration cases, unless the parties agree to institute a special Tribunal." It also provided for the general

By arbitration.

[1] Appendix, pp. xliv *et seq.*

organization of the Court at The Hague, for the procedure, and for an award without appeal, unless the right to revision be reserved in the "Compromis." Other powers might adhere, and any contracting power might withdraw its adherence one year after notification. The United States gave its adherence under reservation in regard to the Monroe Doctrine.

The Second Peace Conference at The Hague in 1907, desirous "of insuring the better working in practice of Commissions of Inquiry and Tribunals of Arbitration, and of facilitating recourse to arbitration in cases which allow of a summary procedure," concluded, October 18, 1907, a new Convention for the Pacific Settlement of International Disputes.[1]

The Hague Court met with increasing favor after 1902, when the United States and Mexico submitted to it the first case relating to the Pious Fund, and many cases have followed.[2]

(1) The Permanent Court of Arbitration at The Hague has competence for all arbitration cases.

The Permanent Court of Arbitration.

(2) It is constituted by the selection by each contracting power for a period of six years of four persons, at most. All of these are inscribed as members of the court. From this list of "Arbitrators" the states parties to a controversy must choose. Failing to agree on the constitution of the court, each party chooses two arbitrators, and these together choose an umpire, or failing this, a selected third power names the umpire, or two powers named by the parties make the choice, and to the arbitrators the *compromis* defining the case is submitted.

(3) The procedure if not determined in advance by the parties is prescribed in the Convention. There may be "written pleadings and oral discussions." Great freedom is allowed in securing the fullest presentation of each case.

(4) The decision of the tribunal is by a majority vote, and the award "must give the reasons on which it is based."

[1] Appendix IV, pp. xli *et seq.* [2] Wilson, "Hague Arbitration Cases," p. 1.

(5) The publication of the award is in public sitting.

(6) Demand for revision of the award on the basis of the discovery of some new fact can be made if the right has been reserved in the *compromis*.[1]

Since the Hague Conference of 1907 many states have negotiated special arbitration treaties, and certain states have agreed to leave all disputes which arise between them to arbitral adjudication.

Of the leading cases of arbitration during the nineteenth century, the decision in one case was rejected by both parties to the dispute,[2] and in one case rejected by one of the parties.[3] In several other instances one party has refused to submit to arbitration questions readily lending themselves to such settlement, even though requested by the other party. Nineteenth-century arbitration cases numbered several hundred, and there have been a large number of cases since 1900.

(*g*) Provision "for the establishment of a Permanent Court of International Justice" was made in Article XIV of the League of Nations Covenant of the Treaty of Versailles, June 28, 1919.[4] "The Statute of the Permanent Court of International Justice" was approved by the Assembly of the League of Nations, December 13, 1920.[5] The Court was to consist of fifteen members, eleven judges and four deputy-judges elected by the Assembly and Council of the League of Nations for nine years. The Court met for organization at The Hague, January 30, 1922, and the first decision was rendered, July 31, 1922, on the validity of the nomination, under article 389 of the Treaty of Versailles, of a delegate to the international labor conference.

Permanent Court of International Justice.

[1] For text of Convention, see Appendix, p. xli.

[2] See, on this entire subject, Moore's "International Arbitration"; Holls's "Hague Peace Conference," 176–305; and for this case between the United States and Great Britain, 1 Moore, "Arbitrations," 137.

[3] 2 Moore, "Arbitrations," 1749. [4] Appendix, cxiv. [5] Appendix, cxxii.

91. Methods of Non-hostile Redress

Good offices, mediation, arbitration and judicial procedure are not always acceptable to both parties. Consequently certain other practices have arisen with the view of obtaining satisfaction by measures short of war. Sometimes there may be resort to non-intercourse or to a boycott. Formerly an individual might be commissioned by a letter of marque and reprisal to obtain satisfaction from a state for injuries which he had suffered. This practice is, however, discontinued, and satisfaction must be obtained through the proper state channels. There may be a simple display of force, though the usual means are classed as non-intercourse retorsions, reprisals, of which embargo is an important variety, and pacific blockades.

92. Non-intercourse and Boycott

The resort to non-intercourse as a method of putting pressure upon a state has been common. The non-importation and non-intercourse acts of the early nineteenth century are examples of such measures short of war. In recent years propositions have been made to extend the idea of non-intercourse so that by international agreement, as by Article XVI of the Covenant of the League of Nations, an offending state shall be entirely isolated as regards international trade and other contact.[1] Non-intercourse measures have met with varying degrees of success depending upon the conditions of the parties concerned.

The boycott, generally involving refusal by nationals of one state to deal in any way with the nationals of another state, has sometimes been effective in bringing a state to settle differences which diplomacy did not speedily adjust. This has been particularly illustrated in Chino-Japanese relations of recent years.

[1] Appendix, p. cxvi.

93. Retorsion

Retorsion is a species of retaliation in kind.[1] Retorsion may not consist in acts precisely identical with those which have given offense, though it is held that the acts should be analogous. The offense in consequence of which measures of retorsion are taken may be an act entirely legitimate and desirable from the point of view of the offending state. Another state may, however, consider the act as discourteous, injurious, discriminating, or unduly severe. In recent years commercial retorsion has become a very important means of retaliation which, bearing heavily upon modern communities, may lead to a speedy settlement of difficulties. The tariff wars of recent years show the effectiveness of commercial retorsion, *e.g.* the measures in consequence of the tariff disagreements between France and Switzerland in 1892. These measures of retorsion should always be within the bounds of municipal and international law.

94. Reprisals

Reprisals are acts of a state performed with a view to obtaining redress for injuries. The injuries leading to reprisals may be either to the state or to a citizen, and the acts of reprisal may fall upon the offending state or upon its citizens either in goods or person. The general range of acts of reprisal may be by (1) the seizure and confiscation of public property or private property,[2] and (2) the restraint of intercourse, political, commercial, or general. In extreme cases, acts of violence upon persons belonging to one state, when in a foreign state, have led to similar acts, upon the part of the state whose subjects are injured, against the subjects of the foreign state. This practice is looked upon with disfavor, though it might be sanctioned by extremest necessity. In consequence of the arrest by Mex-

[1] Pradier-Fodéré, 2634–2636.

[2] For the rules in regard to the collection of contract debts, see Sec. 101 (*c*), p. 240.

ican authorities of two American seamen at Tampico in 1914 Congress authorized the employment of American forces disclaiming "any purpose to make war on Mexico." [1] Acts of retaliation for the sake of revenge are generally discountenanced. Reprisals in time of peace here mentioned are distinct from reprisals by belligerents.

95. Embargo

Embargo consists in the detention of ships and goods which are within the ports of the state resorting to this means of reprisal. It may be (1) civil or pacific embargo, the detention of its own ships, as by the act of the United States Congress in 1807, to avoid risk on account of the Berlin Decree of Napoleon, 1806, and the British Orders in Council, 1807; or (2) hostile, the detention of the goods and ships of another state. It was formerly the custom to detain within the ports of a given state the ships of the state upon which it desired to make reprisals, and if the relations between the states led to war to confiscate such ships. Hostile embargo may now be said to be looked upon with disfavor, and a contrary policy is generally adopted, by which merchant vessels may be allowed a certain time in which to load and depart even after the outbreak of hostilities. By the proclamation of the President of the United States declaring that war with Spain had existed since April 21, 1898, thirty days were allowed and Spain, by the royal decree of April 23, 1898, allowed five days.[2]

The Hague Convention of 1907 relative to the Status of Enemy Merchant Ships at the Outbreak of Hostilities, while not fixing the number of days of grace, stated that "it is desirable that it should be allowed to depart freely, either immediately or after a reasonable number of days of grace, and to proceed, after being furnished with a pass, direct to its port of

[1] 38 Sts. at Large, 1770. [2] Proclamations and Decrees, p. 93.

destination or any other port indicated." [1] At the outbreak of the World War, Great Britain granted in some cases ten days of grace, France seven days, and Italy and some other states granted no days of grace.[2]

An embargo of somewhat different character was provided for in American legislation of March 14, 1912, and January 31, 1922, by which the President of the United States was authorized to prohibit the export of arms or munitions to certain countries where a condition of domestic violence existed.[3]

96. Pacific Blockade

Pacific blockade is a form of reprisal or constraint which consists in the blockading by one or more states of certain ports of another state without declaring or making war upon that state. In the conduct of such blockades practice has varied greatly. In general, however, the vessels of states not parties to the blockade are not subject to seizure. Such vessels may be visited by a ship of the blockading squadron in order to obtain proof of identity. Whether vessels under foreign flags are liable to other inconveniences or to any penalties is not defined by practice or opinion of text writers. "The Institute of International Law," in 1887, provided that pacific blockade should be effective against the vessels of the blockaded party only. This position seemed to be one which could be generally accepted. From the nature of pacific blockade as a measure short of war, its consequences should be confined only to the parties concerned. The pacific blockade of Greece in 1886 extended only to vessels flying the Greek flag,[4] but the admirals of the Great Powers in the pacific blockade of Crete in 1897 endeavored to establish the right to control other than Greek vessels if they carried merchandise for the Greek troops or for

[1] Appendix, p. lxxvi.
[2] N. W. C. 1915, p. 16.
[3] See ante, p. 65.
[4] Parl. Papers, Greece, No. 4, 1886.

the interior of the island. As no case arose to test the claim, this question cannot be regarded as settled.

The provisions of the pacific blockade of Crete in 1897 were as follows: —

"The blockade will be general for all ships under the Greek flag.

"Ships of the six powers or neutral may enter into the ports occupied by the powers and land their merchandise, but only if it is not for the Greek troops or the interior of the island. These ships may be visited by the ships of the international fleets.

"The limits of the blockade are comprised between 23° 24′ and 26° 30′ longitude east of Greenwich, and 35° 48′ and 34° 45′ north latitude." [1]

The Secretary of State of the United States, in acknowledging the receipt of the notification of the action of the powers, said: "I confine myself to taking note of the communication, not conceding the right to make such a blockade as that referred to in your communication, and reserving the consideration of all international rights and of any question which may in any way affect the commerce or interests of the United States." [2] The weight of authority supports the position of the United States.

(*a*) The first attempt to establish a blockade without resorting to war was in 1827, when Great Britain, France, and Russia blockaded the coasts of Greece with a view to putting pressure upon the Sultan, its nominal ruler. Since that time there have been pacific blockades varying in nature: blockade of the Tagus by France, 1831; New Granada by England, 1836; Mexico by France, 1838; La Plata by France, 1838 to 1840; La Plata by France and England, 1845 to 1848; Greece by England, 1850; Formosa by France, 1884; Greece by Great Britain, Germany, Austria, Italy, and Russia, 1886; Zanzibar by Portugal, 1888; Crete by Great Britain, Germany, Austria,

Instances of pacific blockades.

[1] The *London Gazette*, March 19, 1897. [2] U. S. For. Rel. 1897, p. 255.

France, Italy, and Russia, 1897; and Venezuela by Great Britain, Germany and Italy, 1902. This blockade of 1902 was at first announced as a pacific blockade, and when third states raised objection was transformed into a war blockade.[1]

(*b*) From these instances it may be deduced (1) that pacific blockade is a legitimate means of constraint short of war, (2) that those states parties to the blockade are bound by its consequences, (3) that as a matter of policy it may be advisable to resort to pacific blockade in order to avoid the more serious resort to war, and (4) that states not parties to the pacific blockade are in no way bound to observe it, though their ships cannot complain because they are required to establish their identity in the ordinary manner. These conclusions seem to be in harmony with the spirit of the Hague conventions limiting the effect of hostilities to the period of the war subsequent to a declaration. To determine the nationality of a ship the so-called "right of approach" may be exercised.

Present attitude toward pacific blockade.

[1] U. S. For. Rel. 1903, pp. 417 ff.

PART FOUR

INTERNATIONAL LAW OF WAR

OUTLINE OF CHAPTER XVI

WAR

97. DEFINITION OF WAR.

98. LAWS OF WAR.
   (*a*) Development of rules.
   (*b*) Sanctions for laws of war.

99. COMMENCEMENT OF WAR.
   (*a*) Historical practice.
   (*b*) Rules of the Hague Conference.
   (*c*) Civil war.

100. DECLARATION AND NOTIFICATION OF WAR.
   (*a*) Historical practice.
   (*b*) Provisions of the Hague Conference.
   (*c*) Practice in World War.

101. OBJECT OF WAR.
   (*a*) From the political point of view.
   (*b*) From the military point of view.
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102. GENERAL EFFECTS OF WAR.
   (*a*) The general and immediate effects.
      (1) To suspend all non-hostile intercourse between the states.
      (2) To suspend all the ordinary non-hostile intercourse between the citizens of the states.
      (3) To introduce new principles in intercourse with other states.
      (4) To abrogate or suspend certain treaties.
   (*b*) The Hague Convention with respect to the Laws and Customs of War on Land.
   (*c*) Reprisals and retaliation.

CHAPTER XVI

WAR

97. Definition of War

War is the relation which exists between states or between political entities when there may lawfully be what Gentilis in 1588 defined as "a properly conducted contest of armed public forces."[1] The nature of such contests varied with circumstances, and wars were, accordingly, classified by early writers as public, private, mixed, etc., distinctions that now have little more than historical value.[2] Wars are now sometimes classified as international and civil.

98. Laws of War

(*a*) The laws of war differ as applied to war on land, at sea, or in the air. The laws of land warfare have become most defined owing to long usage.[2] The laws of war on and under the sea are less developed, and the laws of aerial warfare are least elaborated. For land warfare customs have grown up and taken form in laws and codes of which one of the best known is Lieber's Code, General Order No. 100 of the Army of the United States of 1863.[3] There have been many attempts to formulate the law for war on the sea. Some of these were embodied in the Hague Conventions of 1899 and 1907 and in the Declaration of London of 1909. Until the World War the basis of proposed laws for aerial warfare was largely upon analogy or conjectural, owing to

Development of rules.

[1] "De Jure Belli," I, ii, "Bellum est publicorum armorum justa contentio"; Instr. U. S. Armies, § 20, Appendix, p. v.

[2] Halleck, Ch. XVI; Calvo, § 1866 ff.

[3] Appendix, p. i.

the lack of knowledge of the possible use of aircraft in war.[1] Balloons had been used for many years but mainly for observation purposes. With the twentieth century development of dirigibles and heavier than air craft of many kinds rules became necessary.

(*b*) Even though in some respects rules or laws of war had been quite fully developed, the lack of effective sanction has always been felt. Public opinion has not always been an adequate sanction, and the strong state had often acted on the inference that "might makes right." Retaliation by the other belligerent is a possible deterrent. Hague Convention IV of 1907 provides in Article 3 that the offender against the law shall be "liable to pay compensation" and that the belligerent party "shall be responsible for all acts committed by persons forming part of its armed forces." The Treaty of Versailles by Articles 227–230 endeavored to place responsibility upon William II of Hohenzollern and other persons for the World War.

Sanctions for laws of war.

99. Commencement of War

It is now assumed that peace is the normal relation of states.[2] When these relations become strained, it is customary for one or both of the states to indicate this condition by discontinuing some of the means of peaceful intercommunication, or by some act short of war. The withdrawal of a diplomatic representative, an embargo, or any similar action does not mark the commencement of war.

(*a*) War formerly commenced with the first act of hostilities, unless a declaration fixed an earlier date, and in case of a declaration subsequent to the first act of hostilities, war dated from the first act. A proclamation of the blockade of Cuban

[1] Spaight, "Aircraft in War."

[2] The United States wars of the nineteenth century were: June, 1812–Feb., 1815; March, 1846–Feb., 1848; April, 1861–April, 1865; April, 1898–August, 1898; of the twentieth, April, 1917–July, 1921 (Armistice Nov. 11, 1918).

ports preceded the declaration of war between Spain and the United States in 1898.[1] Similarly, hostilities were begun before the declaration of war between China and Japan in 1894,[2] and between Russia and Japan in 1904. Indeed, few of the wars between 1700 and 1914 were actually declared before the outbreak of hostilities, and many were not even declared formally at all.[3] In the World War from 1914 prior declaration was the rule.

Historical practice

(*b*) The present rules in regard to the commencement of war as agreed upon at The Hague in 1907 provide that hostilities between the contracting parties "must not commence without previous and explicit warning, in the form either of a reasoned declaration of war or of an ultimatum with conditional declaration of war."

Rules of the Hague Conference.

(*c*) Civil war naturally is not preceded by a declaration, but exists from the time of the recognition of the belligerency by an outside state, or from the date when the parent state engages in some act of war against the insurgent party.[4] In the case of the Civil War in the United States, the proclamation of blockade of the Southern ports by President Lincoln was held to be sufficient acknowledgment of a state of war.

Civil war.

100. Declaration and Notification of War

(*a*) In ancient times wars between states were entered upon with great formality. A herald whose person was inviolate brought the challenge, or formal declaration, which received reply with due formality. At the beginning of the eighteenth century this practice had become unusual, and in the days of Vattel (1714–1767) the theory of the necessity of a formal declaration was set aside.

Historical practice.

[1] 30 U. S. Sts. at Large, 1769, 1776.
[2] Takahashi, Chino-Japanese, 42 *et seq.*
[3] N. W. C. 1910, p. 45.
[4] Prize Cases, 2 Black, U. S. 635.

It was, however, maintained that a proclamation or manifesto should be issued for the information of the subjects of the states parties to the war, and for the information of neutrals. The practice of public notification became general, and was usually regarded as obligatory.

Provisions of the Hague Conference.

(*b*) In 1907 the Hague Convention relative to the Opening of Hostilities provided as to (1) declaration or ultimatum, and as to (2) notification: —

"Article I. The contracting powers recognize that hostilities between themselves must not commence without previous and explicit warning, in the form either of a reasoned declaration of war or of an ultimatum with conditional declaration of war."

"Art. II. The existence of a state of war must be notified to the neutral powers without delay, and shall not take effect in regard to them until after the receipt of a notification, which may, however, be given by telegraph. Neutral powers, nevertheless, cannot rely on the absence of notification if it is clearly established that they were in fact aware of the existence of a state of war."

Such requirements are reasonable in view of the changes which a state of war brings about in the relations of the parties concerned, and of neutrals. The declarations usually specify the date from which the war begins, and hence have weight in determining the nature of acts prior to the declaration, as the legal effects of war depend on the declaration.

The constitution of a state, written or unwritten, determines in what hands the right to declare war shall rest, *e.g.* in the United States, in Congress.

Of the fifty and more declarations of war in the World War, many specified the hour and minute at which war would exist.

Ultimatums were common and nearly all were "reasoned." Austria declared war against Serbia at noon, July 28, 1914, on the ground of an unsatisfactory reply to the Austrian ultimatum. France informed other Powers that by German declaration "a state of war exists between France and Germany dating from 6.45 P.M. on August 3, 1914." [1]

Practice in World War.

101. Object of War

The object of war may be considered from two points of view, the political and the military. International law cannot determine the limits of just objects for which a state may engage in war.

From the political point of view.

(*a*) Politically the objects have covered a wide range, though there is a growing tendency to limit the number of objects for which a state may go to war. It is generally held that self-preservation is a proper object, but as each state must decide for itself what threatens its existence and well-being, even this object may be very broadly interpreted, *e.g.* in 1914, Austria-Hungary against Serbia, "to bring to an end the subversive intrigues . . . aimed at the territorial integrity of the Austro-Hungarian Monarchy"; United States against Germany, because Germany "has committed repeated acts of war against the Government and the people of the United States." History shows that it has not been difficult from the political point of view to find an object of war when the inclination was present in the state. The nominal are often not the real objects, and the changing conditions during the progress of the war may make the final objects quite different from the initial objects. The simple cost of carrying on hostilities sometimes changes the conditions upon which peace can be made. The classification of causes and objects formerly made has little weight in determining whether a state will enter upon war.

[1] For declarations, etc., see N. W. C. 1917, p. 1.

The questions of policy and conformity to current standards are the main ones at the present time.

(*b*) The object of war in the military sense "is a renewed state of peace," [1] or as stated in the English manual, "to procure the complete submission of the enemy at the earliest possible period with the least possible expenditure of men and money." The "Institute of International Law," Oxford session of 1880, gave as a general principle that the only legitimate end that a state may have in war is to weaken the military strength of the enemy. In general the ultimate object of war is to establish a permanent peace. The means naturally accord with that end and must under present regulations be humane.

From the military point of view.

(*c*) The Hague Conference of 1907 endeavored to remove one of the frequent objects of war by limiting by convention the employment of force for the recovery of contract debts as follows:—

Limitation by the Hague Conference.

"ARTICLE I. The Contracting Powers agree not to have recourse to armed force for the recovery of contract debts claimed from the Government of one country by the Government of another country as being due to its nationals.

"This undertaking is, however, not applicable when the debtor State refuses or neglects to reply to an offer of arbitration, or, after accepting the offer, prevents any 'Compromis' from being agreed on, or, after the arbitration, fails to submit to the award." [2]

102. General Effects of War

(*a*) The general and immediate effects of war are:—

(1) To suspend all nonhostile intercourse between the states parties to the war. (2) To suspend the ordinary nonhostile intercourse between the citizens of the states parties to the war.

The general and immediate effects.

[1] Inst. U. S. Armies, § 29; Appendix, p. vii.

[2] 2 Treaties, 2248. This Convention introduces a modified form of the "Drago Doctrine," for statement of which see U. S. For. Rel. 1903, p. 1.

(3) To introduce new principles in the intercourse of the states parties to the war with third states. These impose new duties upon neutrals and allies.

(4) To abrogate or suspend certain treaties: —

(*a*) To abrogate those treaties which can have force only in time of peace, *e.g.* of alliance, establishing subsidies, etc.

(*b*) To suspend those treaties which are permanent and naturally revive at the end of the war, *e.g.* of naturalization, public debts, etc.

(*c*) To bring into operation treaties concerning the conduct of hostilities.

(*b*) The Convention with Respect to the Laws and Customs of War on Land, signed at The Hague on October 18, 1907, a multilateral convention, in a measure supplants all other codifications and rules upon this subject. In cases for which the Convention provides, the signatory powers are thereby bound;

Conventions on the Laws and Customs of War.

"in cases not included in the Regulations adopted by them the inhabitants and the belligerents remain under the protection and the rule of the principles of international law as they result from the usages established among civilized peoples, from the laws of humanity, and the dictates of the public conscience." [1]

The provisions are to become binding upon the contracting states, and are to be made the regulations for their armed land forces. Non-signatory states may adhere to the Convention upon giving proper notification.[2] This Convention has been so widely adopted that it may be said to be generally binding for the subjects of which it treats.[3] Other Hague Conventions cover certain aspects of war on land and sea. Earlier codes and orders must be consulted for subjects not contained in the Hague Conventions.[4]

[1] Preliminary Declaration, Appendix, p. lxi.
[2] *Ibid.*, Appendix, p. lxii.
[3] List of Signatory States, Appendix, p. xli.
[4] See Appendices.

(*c*) During the World War many acts were committed by the parties on the ground of reprisals or retaliation. It was argued that deliberate violation of accepted rules of warfare should not determine the contest in favor of the offending party and that "a reckless enemy often leaves his opponent no other means of securing himself against the repetition of barbarous outrage." [1] Reprisals and retaliation are not within the scope of international law proper, but are acts undertaken to prevent further violation of international law and have been called measures of "protective retribution." Reprisals and retaliation are ultimate sanctions for the observance of the laws of war.

Reprisal and retaliation.

[1] Instructions, 27, Appendix, p. vi.

OUTLINE OF CHAPTER XVII

STATUS OF PERSONS IN WAR

103. PERSONS AFFECTED BY WAR.

(*a*) Subjects of enemy states.

(*b*) Subjects of neutral states.

(*c*) Combatants and noncombatants.

104. COMBATANTS.

(*a*) Status of combatants allowed to two classes engaging in defensive hostilities.

(*b*) Status of combatants not allowable for those engaging in aggressive hostilities without state authorization.

105. NONCOMBATANTS.

(*a*) Status of noncombatants within a territory under control of an enemy.

(*b*) Status of subjects of one belligerent state within the jurisdiction of the other.

CHAPTER XVII

STATUS OF PERSONS IN WAR

103. Persons Affected by War

(*a*) By the strict theory of war the *subjects of enemy states* are enemies.[1] The treatment of the subjects of enemy states is not, however, determined by the allegiance alone, but by conduct, by relations, and by domicile of the subject.

(*b*) The *subjects of neutral states* are affected by their relations to the hostile states as established by their own government, as determined by their conduct, and as determined by their domicile.

(*c*) By conduct persons are divided into *combatants* and *noncombatants*, according as they do or do not participate in the hostilities. The status of such persons may be further modified by domicile or by political allegiance.

104. Combatants

Combatants in the full sense are the regularly authorized military and naval forces of the states. They are liable to the risks and entitled to the immunities of warfare, and if captured become prisoners of war.

The Hague Convention of 1907 respecting the Laws and Customs of War on Land, which was a revision of that of 1899, provided that:

"Article I. The laws, rights, and duties of war apply not only to armies, but also to militia and volunteer corps fulfilling the following conditions: —

"1. To be commanded by a person responsible for his subordinates;

[1] Instr. U. S. Armies, §§ 20, 21, 22; Appendix, pp. v, vi.

"2. To have a fixed distinctive emblem recognizable at a distance;

"3. To carry arms openly; and

"4. To conduct their operations in accordance with the laws and customs of war.

"In countries where militia or volunteer corps constitute the army, or form part of it, they are included under the denomination 'army.'" [1]

(*a*) The *status of combatants* is also *allowed* to two classes which engage in defensive hostilities: —

(1) The officers and crew of a merchant vessel of an enemy which defends itself by force are liable to capture as prisoners of war.

(2) With regard to *levies en masse* much difference of opinion existed. Article 10 of the Declaration of Brussels, 1874, was adopted at the Hague Conferences in 1899 and 1907, and may be considered as representing a generally accepted position, namely, "The population of a non-occupied territory, who, on the approach of the enemy, of their own accord take up arms to resist the invading troops, without having had time to organize themselves in conformity with Article 1 [providing for responsible leader, uniform, etc.], shall be considered as belligerents if they carry arms openly and if they respect the laws and customs of war." [2]

(*b*) The *status of combatants* is *not allowable* for those who, without state authorization, engage in aggressive hostilities.

(1) When in the time of war the officers and crew of a merchant vessel attack another merchant vessel, they are liable to punishment according to the nature of their acts, and the state to which they owe allegiance is only indirectly responsible, nor can they claim its protection.

(2) When bands of men without state authorization and control, such as guerrilla troops or private persons, engage in

[1] Appendix, p. lxiii.

[2] See Appendix, p. lxiii.

offensive hostilities, they are liable to the same treatment as above mentioned.

(3) Spies are those who, in disguise acting under false pretenses, collect or seek to collect information in the districts occupied by the enemy, with the intention of communicating it to the opposing force.[1] Such agents are not forbidden, but are liable to such treatment as the laws of the capturing army may prescribe. This may be death by hanging, though a spy is always entitled to a trial. The office of spy is not necessarily dishonorable.

"Soldiers not in disguise who have penetrated into the zone of operations of a hostile army to obtain information are not considered spies. Similarly, the following are not considered spies: soldiers and civilians, carrying out their mission openly, charged with the delivery of dispatches destined either for their own army or for that of the enemy. To this class belong likewise individuals sent in balloons to deliver dispatches, and generally to maintain communication between the various parts of an army or a territory." [2]

105. Noncombatants

Noncombatants include those who do not participate in the hostilities. In practice this status is generally conceded to women, children, clergy, scientists, artists, professional men, laborers, etc., who make no resistance, whether subjects of the state or not. These are, of course, liable to the hardships consequent upon war.

Status of noncombatants within a territory under control of an enemy.

(*a*) When the armed forces of one state obtain authority over territory previously occupied by the other state, the noncombatant population is free from all violence or constraint other than that required by military necessity. They are liable, however, to the burdens imposed by civilized

[1] Appendix, pp. xix, lxviii.

[2] Appendix, p. lxviii.

warfare. The disregard of the rights of noncombatant population in occupied areas during the World War in no way changed these principles.

(*b*) Subjects of one of the belligerent states sojourning within the jurisdiction of the other were in early times detained as prisoners. While Grotius (1625) allows this on the ground of weakening the forces of the enemy,[1] and while Ayala had earlier (1597) sanctioned it,[2] Bynkershoek, writing in 1737, mentions it as a right seldom used. The detention of English tourists by Napoleon in 1803 was not in accord with modern usage. During the eighteenth century, the custom was to secure, by treaty stipulation, a fixed time after the outbreak of hostilities during which enemy subjects might withdraw. While similar provisions are inserted in many treaties of the nineteenth century, the practice till 1914 seemed to indicate that even in the absence of treaty stipulations, a reasonable time would be allowed for withdrawal. A large number of treaties of the nineteenth century have provisions to the effect of Article XXVI of the treaty between the United States and Great Britain of 1794: "The merchants and others of each of the two nations residing in the dominions of the other shall have the privilege of remaining and continuing their trade, so long as they live peaceably and commit no offense against the laws; and in case their conduct should render them suspected, and their respective Governments should think proper to order them to remove, the term of twelve months from the publication of the order shall be allowed them for that purpose, to remove with their families, effects, and property." Article 23 of the treaty with Prussia, 1799, is similar. This custom of allowing enemy subjects to remain during good behavior has become common, but can hardly be called a rule of international law. Per-

Status of subjects of one belligerent state within the jurisdiction of the other.

[1] "De Jure Belli," III, ix, 4.

[2] "De Jure et Officiis Bellicis," I, v, 25.

sons thus allowed to remain are generally treated as neutrals,[1] though in the case of Alcinous *v.* Nigreu [2] it was held that an enemy subject, residing in England without a license, could not maintain an action for breach of contract, though the contract which had been entered into before the war was valid and might be enforced when peace was restored.

In the case of Porter *v.* Freudenberg in 1915 it was said: "When once hostilities have commenced he (an alien enemy plaintiff) cannot, so long as they continue, be heard in any suit or proceeding in which he is the person first setting the Courts in motion," though "he can appear and be heard in his own defence." [3]

[1] Janson *v.* Driefontein, Consolidated Mines, Ltd., L. R. [1902], A. C. 484.
[2] 4 Ellis and Blackburn's Reports, 217.
[3] L. R. [1915], 1 K. B. 857.

OUTLINE OF CHAPTER XVIII

STATUS OF PROPERTY ON LAND

106. PUBLIC PROPERTY OF THE ENEMY.

- (*a*) Early practice.
- (*b*) Provisions of the Hague Conference.

107. REAL PROPERTY OF ENEMY SUBJECTS.

108. PERSONAL PROPERTY OF ENEMY SUBJECTS.

- (*a*) Movable property now exempted as far as possible.
  - (1) Stock in the public debt wholly exempt.
- (*b*) Angary.
- (*c*) Contributions.
- (*d*) Requisitions.
- (*e*) Foraging.
- (*f*) Booty.

CHAPTER XVIII

STATUS OF PROPERTY ON LAND

106. Public Property of the Enemy

(*a*) FORMERLY the public property of the enemy, whatever its nature, was regarded as hostile, and liable to seizure. Practice of modern times has gradually become less extreme, and the attitude of the powers in restoring the works of art which Napoleon had brought to Paris shows the sentiment early in the nineteenth century. By Article 245 of the Treaty of Versailles, June 28, 1919, Germany was bound to restore to France works of art, etc., carried away in 1870–1871. The practice in regard to public property of the enemy has now become fairly defined though not always observed in the World War.

Early practice.

The public property of one belligerent state within the territory of the other at the outbreak of war, if real property, may be administered during the war for the benefit of the local state; if movable, it is liable to confiscation. Works of art, scientific and educational property, and the like are, however, exempt.[1]

(*b*) In case one belligerent by military occupation acquires authority over territory formerly within the jurisdiction of the other, the rules of the Hague Conference of 1907 provide as follows: —

Provisions of the Hague Conference.

"ART. 53. An army of occupation can only take possession of the cash, funds, and realizable securities belonging strictly to the State, depôts of arms, means of transport, stores and supplies, and, generally, all movable property of the State which may be used for military operations.

"All appliances, whether on land, at sea, or in the air, adapted

[1] Appendix, pp. viii, lxviii, lxxi.

for the transmission of news, or for the transport of persons or things, apart from cases governed by maritime law, depôts of arms and, generally, all kinds of war material, even though belonging to private persons, may be seized, but they must be restored at the conclusion of peace, and indemnities paid for them.

"ART. 54. Submarine cables connecting an occupied territory with a neutral territory shall not be seized or destroyed except in the case of absolute necessity. They must likewise be restored and compensation fixed when peace is made.

"ART. 55. The occupying State shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural works belonging to the hostile State, and situated in the occupied country. It must protect the capital of these properties, and administer it according to the rules of usufruct.

"ART. 56. The property of communes, that of religious, charitable, and educational institutions, and those of arts and science, even when State property, shall be treated as private property.

"All seizure of, and destruction, or intentional damage done to such institutions, to historical monuments, works of art or science, is prohibited, and should be made the subject of proceedings."[1]

107. Real Property of Enemy Subjects

The real property of the subject of one belligerent situated within the territory of the other belligerent was in early times appropriated by the state; later practice administered it during the war, for the benefit of the state; and recently it was treated as the real property of any nonhostile foreigner, but during the World War alien enemy property was ordinarily placed under government control or restrictions.[2]

[1] Appendix, p. lxxi.

[2] British Proclamation relating to Trading with the Enemy, August 5, 1914; French Decree of September 14, 1914; U. S. Trading with the Enemy Act, October 6, 1917, 40 Sts. at Large, 459; and subsequent legislation. See also 2 Hyde, 232.

It is generally conceded that real property of the subjects of either state is unaffected by hostile occupation by the forces of the other state, except so far as the necessities of warfare may require.[1]

108. Personal Property of Enemy Subjects

(*a*) The *movable property* of the subject of one of the belligerent states in the territory of the other belligerent state was until comparatively recent times appropriated. In the case of Brown *v.* United States,[2] in 1814, the Supreme Court held that the "existence of war gave the right to confiscate, yet did not of itself and without more, operate as a confiscation of the property of an enemy," though it further held that the court could not condemn such property unless there was a legislative act authorizing the confiscation. Many modern treaties provide that in case of war between the parties to the treaties subjects of each state may remain in the other, "and shall be respected and maintained in the full and undisturbed enjoyment of their personal liberty and property so long as they conduct themselves peaceably and properly, and commit no offense against the laws."[3] Recent practice before the World War had exempted personal property of the subject of one belligerent state from all molestation, even though it was within the territory of the other at the outbreak of war. Of course, such property was liable to the taxes, etc., imposed upon others not enemy subjects and could not be used for war purposes by the owner.

In case of hostile occupation, the Hague Conference of 1907 summarized the rules as follows: —

"ART. 46. . . . Private property cannot be confiscated.

"ART. 47. Pillage is formally prohibited.

[1] Appendix, pp. vii, lxxi.

[2] 8 Cr., 110.

[3] See Index U. S. Treaties, "War."

"ART. 48. If, in the territory occupied, the occupant collects the taxes, dues, and tolls imposed for the benefit of the State, he shall do so, as far as possible, in accordance with the rules in existence and the assessment in force. . . .

"ART. 49. If . . . the occupant levies other money taxes in the occupied territory, this can only be for military necessities or the administration of such territory."

Articles 50, 51, 52, provide that burdens due to military occupation shall be as equable as possible, and that payment shall be made for requisitions.[1]

The practice now is to exempt private property so far as possible from the consequences of hostile occupation, and to take it only on the ground of reasonable military necessity.[2]

With regard to one particular form of property, modern commercial relations as influenced by state credit have been more powerful than theory or country. The stock in the *public debt* held by an enemy subject is wholly exempt from seizure or sequestration, and in practice interest has often been paid to enemy subjects during the continuance of the war.

(*b*) A practice similar to that formerly sanctioned under the so-called right of *angary* (*jus angariae*) was permitted in regard to means of transport and communication under Articles 53 and 54 of Hague Convention IV and Article 19 of Hague Convention V of 1907.[3] These articles permit the belligerent to seize the means of transport and communication subject to restoration and compensation. During the World War this practice was common.

In case of belligerent occupation, contributions, requisitions, and other methods are sometimes resorted to in supplying military needs.

(*c*) *Contributions* are money exactions in excess of taxes. Contributions should be levied only by the general-in-chief.

[1] Appendix, p. lxx.
[2] Appendix, pp. vii, lxx.
[3] Appendices, pp. lxxi, lxxv; see also p. 355.

(*d*) *Requisitions* consist in payment in kind of such articles as are of use for the occupying forces, as food, clothes, horses, boats, compulsory labor, etc. Requisitions may be levied by subordinate commanders when there is immediate need, otherwise by superior officers. Such requisitions should not be in excess of need or of the resources of the region.

Receipts for the value of both contributions and requisitions should be given, in order that subsequent impositions may not be made without due knowledge, and in order that the sufferers may obtain due reparation on the conclusion of peace, the Hague Convention provided:—

> The requisitions in kind shall, as far as possible, be paid for in ready money; if not, a receipt shall be given and the payment of the amount due shall be made as soon as possible.[1]

In naval warfare "requisitions for provisions or supplies for the immediate use of the naval force before the place in question"[2] are allowed. Such requisitions may be enforced by bombardment if necessary. Contributions, however, cannot be exacted unless after actual and complete belligerent occupation, as by land forces. Contributions in the form of ransom to escape bombardment cannot be levied, as in such cases occupation is not a fact.[3]

It was generally accepted in principle that contributions should not be exorbitant or penal in character. Before 1914 it was maintained that reasonable contributions from cities would distribute the burden of war, the contribution levied upon the city being used to purchase supplies from rural communities.

(*e*) *Foraging* is resorted to in cases where lack of time makes it inconvenient to obtain supplies by the usual process of requisition, and consists in the actual taking of provisions for men and animals by the troops themselves.

Receipts should, when possible, be given. It often happens

[1] Appendix, p. lxxi. [2] Scott, "Conferences," p. 262. [3] *Ibid.*

that no owner appears to demand compensation. The goods taken are sometimes of such nature as to make valuation difficult.

(*f*) *Booty* commonly applies to military supplies seized from the enemy. In a more general sense it applies to all property of the enemy which is susceptible of appropriation. Such property passes to the state of the captor, and its disposition should be determined by that state.

OUTLINE OF CHAPTER XIX

STATUS OF PROPERTY AT SEA

109. VESSELS.

- (*a*) Status of public vessels of a belligerent.
- (*b*) Status of private vessels of a belligerent.
  - (1) Provisions of the Hague Conference.
- (*c*) Transfer of enemy vessel to a neutral flag.

110. GOODS.

111. SUBMARINE AND RADIO TELEGRAPHY.

- (*a*) Treatment of submarine telegraphic cables in time of war.
- (*b*) Treatment of radio telegraph in time of war.

CHAPTER XIX

STATUS OF PROPERTY AT SEA

109. Vessels

VESSELS may be classed as public, belonging to the state, and private, belonging to citizens of the state.

(*a*) Public vessels of a belligerent are liable to capture in any port or sea except in jurisdictional waters of a neutral. The following public vessels are, however, exempt from capture unless they perform some hostile act: —

Status of public vessels of a belligerent.

(1) Cartel ships commissioned for the exchange of prisoners.

(2) Vessels engaged exclusively in non-hostile scientific work and in exploration.[1]

(3) Hospital ships, properly designated and engaged exclusively in the care of the sick and wounded.[2]

(*b*) Private vessels of the enemy are liable to capture in any port or sea except in jurisdictional waters of a neutral. The following private vessels when innocently employed are, however, exempt from capture: —

Status of private vessels of a belligerent.

(1) Cartel ships.

(2) Vessels engaged in explorations and scientific work.

(3) Hospital ships.

(4) Small coast fishing vessels. This exemption is not allowed to deep-sea fishing vessels.[3]

[1] Appendix, p. lxxxiv. [2] Appendix, p. lxxviii.

[3] Appendix, p. lxxxiv; *Paquete Habana*, 175 U. S. 677; The *Berlin*, L. R. 1914, p. 265.

(5) Small boats employed in local trade.

(6) Vessels of one of the belligerents in the ports of the other at the outbreak of hostilities were frequently allowed a specified time in which to take cargo and depart. In the war between the United States and Spain, 1898, Spanish vessels were allowed thirty days in which to depart and were to be exempt on homeward voyage. Vessels sailing from Spain for the United States ports before the declaration of war were to be allowed to continue their voyages.[1] Spain allowed vessels of the United States five days in which to depart.[2] It did not prohibit the capture of such ships after departure. No provision was made for vessels sailing from the United States for Spanish ports before the declaration of war.

Provisions of the Hague Conference.

The Hague Convention of 1907 relative to the Status of Enemy Merchant Ships at the Outbreak of Hostilities provided for "a reasonable number of days of grace" for vessels in an enemy port at the outbreak of hostilities or entering an enemy port without knowledge of the hostilities. Enemy merchant vessels on the sea ignorant of the outbreak of hostilities may be detained without compensation or requisitioned or even destroyed on payment of compensation, due care being taken for security of persons and papers on board.

These exemptions do not apply to "merchant ships whose build shows that they are intended for conversion into war-ships."[3]

At the outbreak of the World War, Great Britain was prepared to allow ten days of grace to enemy vessels, France allowed seven days, Japan two weeks, but in general belligerents entering the war at later periods

[1] Proclamation of April 26, 1898. [2] Decree of April 23, 1898.
[3] Appendix, p. lxxvi.

granted no days of grace.[1] The principle of reciprocity in number of days, earlier advocated by the United States, was generally followed where days of grace were granted.

In the Prize Law of Japan, 1894, owing to the international relations of the lighthouse system along the Chinese coast, "boats belonging to lighthouses" were exempt. This practice is not usual. [2]

By treaty of August 20, 1890, between Great Britain and France vessels employed in the postal service were exempted, but this is not a general practice.[3] In the World War postal service vessels received scant consideration.

(*c*) To remove uncertainty in regard to transfer of an enemy vessel to a neutral flag in order to change the status of the vessel in anticipation of or after the outbreak of war, somewhat detailed regulations were proposed in Articles 55 and 56 of the Declaration of London, 1909 [4]:

Transfer of enemy vessel to neutral flag.

The Declaration of London was not ratified, and at the outbreak of the World War the attitude of states upon the right of transfer differed. The United States had long maintained that a *bona fide* transfer was valid, though Congress in 1916 forbade the Shipping Board the right to purchase or employ vessels registered as of or flying the flag of belligerent states.[5] On the continent of Europe the doctrine, though not universally adopted, has been that transfers during war were void and that the intent should be considered. The British and American attitudes have usually been the same, but in the World War the British practically adopted the continental view.[6]

[1] N. W. C. 1915, p. 19; 1917, pp. 200, 246; 1918, p. 112.
[2] Takahashi, Chino-Japanese, p. 178.
[3] Appendix, p. lxxxiv.
[4] Appendix, p. cxxxviii.
[5] 39 Sts. at Large, 730.
[6] Order in Council, Oct. 25, 1915; The *Dacia*, Conseil des Prises, (1916) 180.

110. Goods

In general, all public goods found upon the seas outside of neutral jurisdiction are liable to capture. Works of art, historical and scientific collections, are sometimes held to be exempt, and probably would not be retained.

Private hostile property at sea and not under the flag of a neutral is liable to capture unless such property consist of vessels, etc., exempt under § 109 (*b*).

Contraband of war under any flag, outside of neutral territory, and destined for the enemy forces, is liable to capture.

Neutral goods in the act of violating an established blockade may be captured.

Previous to the Treaty of Paris in 1856, great diversity in the treatment of maritime commerce prevailed. This treaty provided that: —

"The neutral flag covers enemy's goods, with the exception of contraband of war," and

"Neutral goods, with the exception of contraband of war, are not liable to capture under the enemy's flag."[1]

Nearly all the important states of the world acceded to these provisions except the United States and Spain, and both of these powers formally proclaimed that they would observe these provisions in the War of 1898.[2]

111. Submarine and Radio Telegraphy

(*a*) The position of submarine telegraphic cables was until recent years of great importance. Such cables easily became instruments of value in carrying on the operations of war. A convention of representatives of the important states of the world met at Paris in 1884, and agreed upon rules for the protection of submarine cables.[3] Article XV of this convention

[1] Appendix, p. xxxi.
[2] U. S. Proclamation, April 26, 1898; Spain, Decree of April 23, 1898.
[3] 2 Treaties, p. 1949.

announced that "It is understood that the stipulations of this convention shall in no wise affect the liberty of action of belligerents."

Submarine telegraphic cables.

The treatment of submarine cables in time of war as determined by opinions, proclamations, etc., seemed to establish that,

(1) Submarine telegraphic cables between points within the territory of an enemy or between a point within the territory of one belligerent and a point within the territory of the other belligerent are liable to such treatment as the exigencies of war may determine.

(2) Submarine telegraphic cables between points within neutral territories are not liable to interruption.[1]

(3) Submarine telegraphic cables between a point within the territory of an enemy and a point within the territory of a neutral are liable to interruption within the enemy's jurisdiction or outside of neutral jurisdiction if the cables are used for war purposes.

It is generally held that such interruption renders the belligerent interrupting the cable service, to some extent liable.

The Convention of The Hague in 1907 respecting the Laws and Customs of War on Land provided:

"ART. 54. Submarine cables connecting an occupied territory with a neutral territory shall not be seized or destroyed except in the case of absolute necessity. They must likewise be restored, and compensation fixed when peace is made."

In recent years there has been a tendency on the part of neutrals to assume censorship over submarine telegraphic cables. States pursued this course quite generally in 1914.

[1] Stockton, "Outlines," p. 360.

See discussion, Wilson, "Submarine Telegraphic Cables in their International Relations," Lectures U. S. Naval War College, 1901; also "The Report of the Inter-Departmental Committee on Cable Communication" to British Parliament, March, 1902.

(*b*) Radio telegraph has also become in late years a very important factor in war. There has been an attempt to extend to radio communication rules analogous to those applied to submarine cables, but these are not sufficient in all cases. Under the London Convention of July 5, 1912, states assumed a large measure of control over wireless telegraphy. A corresponding responsibility must be assumed. Russia on April 15, 1904, in a note addressed to the foreign states endeavored to make the use of wireless by correspondents on neutral vessels analogous to spying.

Radio telegraph.

Objection was immediately made to the treatment of correspondents as spies, but no objection was made to the seizure of the wireless apparatus as prize.

The Hague Convention of 1907 respecting Rights and Duties of Neutral Powers also provides that:

"ART. III. Belligerents are likewise forbidden to:

"(*a*) Erect on the territory of a neutral Power a wireless telegraphy station or other apparatus for the purpose of communicating with belligerent forces on land or sea;

"(*b*) Use any installation of this kind established by them before the war on the territory of a neutral Power for purely military purposes, and which has not been opened for the service of public messages. . . .

"ART. VIII. A neutral Power is not called upon to forbid or restrict the use on behalf of the belligerents of telegraph or telephone cables or of wireless telegraphy apparatus belonging to it or to companies or private individuals." [1]

While the law in regard to radio communication is not settled yet certain principles seem to be recognized.

1. A belligerent may regulate or prohibit the use of wireless telegraph within the area of operations.

[1] Appendix, pp. lxxii, lxxiii; N. W. C., 1907, pp. 138–176.

2. Unneutral use of wireless telegraph on board a neutral vessel makes the vessel liable to the penalty for unneutral service.

3. The wireless apparatus is similarly liable to penalty, *i.e.* it may be confiscated or sequestrated.

During the World War radio stations in neutral states were usually placed under censorship and vessels entering ports were required to disconnect their radio apparatus.

OUTLINE OF CHAPTER XX

CONDUCT OF HOSTILITIES

112. BELLIGERENT OCCUPATION.

(*a*) The sovereignty of the occupied territory.
(*b*) The local laws of the invaded state.
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(*d*) Personal rights.

113. FORBIDDEN METHODS IN THE CONDUCT OF HOSTILITIES.

(*a*) Declaration of the Hague Conferences on this subject.

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CHAPTER XX

CONDUCT OF HOSTILITIES

112. Belligerent Occupation[1]

In IV Hague Convention of 1907, it is stated that for land warfare:

"ART. XLII. Territory is considered occupied when it is actually placed under the authority of the hostile army.

"The occupation applies only to the territory where such authority is established, and in a position to assert itself.

"ART. XLIII. The authority of the legitimate power having actually passed into the hands of the occupant, the latter shall take all steps in his power to reëstablish, and insure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country."[2]

(*a*) The sovereignty of the occupied territory does not pass to the occupying state, but only the right to exercise the authority necessary for safety and operations of war. Belligerent occupation was formerly held to carry with it the right to full disposition of whatever appertained to the territory. During the nineteenth century it was given a clearer definition. Belligerent occupation is a fact impairing the exercise of the usual jurisdiction.

The sovereignty of occupied territory.

(*b*) In general the civil laws of the invaded state continue in force in so far as they do not affect the hostile occupant unfavorably. The regular judicial tribunals continue to act in cases not affecting the military occupation. Administrative officers continue to perform their

Local laws of invaded state.

[1] For the discussion of the laws and customs of war, at the Hague Peace Conference, see Holls, 134 *et seq.*, and Higgins, p. 256 *et seq.*

[2] See Appendix, pp. lxix, lxx.

functions in absence of orders to the contrary, though of course purely political officers would be limited in the exercise of their functions; *e.g.* registrars of marriages, births, and deaths might act as usual, while the authority of a governor might be suspended. There is no doubt that the freedom of the press cannot be claimed, as this might bring grave consequences upon the occupying force.

(*c*) The belligerent occupant may destroy or appropriate public property which may have a hostile purpose, as forts, arms, armories, etc. The occupying force may enjoy the income from the public sources. Strictly private property should be inviolable, except so far as the necessity of war requires contrary action.

Public and private property.

(*d*) The Hague Convention enjoins the belligerent occupant to respect personal rights.

Personal rights.

"ART. XLIV. Any pressure on the population of occupied territory to furnish information about the army of the other belligerent or about its means of defence is prohibited.

"ART. XLV. Any pressure on the population of occupied territory to take the oath to the hostile Power is prohibited.

"ART. XLVI. Family honor and rights, individual life and private property, as well as religious convictions and practice, must be respected." [1]

The invader is bound to give such measure of protection to the inhabitants of the occupied territory as he is able.[2]

Belligerent occupation begins when an invaded territory is effectively held by a military force.

113. Forbidden Methods

In the conduct of hostilities certain methods of action and certain instruments are generally forbidden. These prohibitions refer mainly to land and sea warfare though the principles may be fundamental.

[1] Appendix, pp. lxvii-lxx.

[2] Appendix, pp. ix, lxx.

Deceit involving perfidy is forbidden.[1] As there are certain conventional agreements held to exist even between enemies, violations of these agreements remove from the violator the protection of the laws of war.

On land it is not permitted

"(*a*) To employ poison or poisoned weapons;

"(*b*) To kill or wound treacherously individuals belonging to the hostile nation or army;

"(*c*) To kill or wound an enemy who, having laid down his arms, or having no longer means of defense, has surrendered at discretion;

"(*d*) To declare that no quarter will be given;

"(*e*) To employ arms, projectiles, or material calculated to cause unnecessary suffering;

"(*f*) To make improper use of a flag of truce, of the national flag, or of the military insignia and uniform of the enemy, as well as the distinctive badges of the Geneva Convention;

"(*g*) To destroy or seize the enemy's property, unless such destruction or seizure be imperatively demanded by the necessities of war;

"(*h*) To declare abolished, suspended, or inadmissible in a court of law the rights and actions of the nationals of the hostile party.

"A belligerent is likewise forbidden to compel the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of war." [2]

"The bombardment by naval forces of undefended ports, towns, villages, dwellings, or buildings is forbidden.

"A place cannot be bombarded solely because automatic submarine contact mines are anchored off the harbor." [3]

Undefended towns may be bombarded if they refuse reasonable requisitions for supplies necessary for the immediate

[1] Appendix, p. v.

[2] Appendix, p. lxvii.

[3] Scott, "Conferences," p. 260.

use of the naval force, but not for failure to make money contributions.[1] Provisions for protection of non-military buildings, monuments, etc., have been made.[2]

While the use of false colors in naval war is not yet forbidden, when summoning a vessel to lie to, or before firing a gun in action, the national colors must be displayed. The use of the conventional flag of truce, a white flag, or of the hospital flag, red cross on white ground, to cover military operations or supplies is forbidden.[3] Stratagems, such as feigned attacks, ambush, and deceit not involving perfidy, are allowed.[4]

The Declaration of St. Petersburg of 1868 prohibited explosive bullets weighing less than 400 grams. There was also an agreement in 1899 "to abstain from the use of bullets which expand or flatten easily in the human body." Many states became parties to this agreement.

The Hague Conference of 1899 also declared against the "use of projectiles, the sole object of which is the diffusion of asphyxiating or deleterious gases."[5]

The Washington Conference in 1922 prohibited "The use in war of asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices," as "having been justly condemned by the opinion of the civilized world." Nine powers signed this treaty.

The Hague Convention of 1907 provided:

"ART. I. It is forbidden:

"1. To lay unanchored automatic contact mines, except when they are so constructed as to become harmless one hour at most after the person who laid them ceases to control them;

"2. To lay anchored automatic contact mines which do not become harmless as soon as they have broken loose from their moorings;

[1] Scott, "Conferences," p. 261. [2] Appendix, pp. lxvii–lxviii.
[3] Appendix, pp. lxvii, lxxxii. [4] Appendix, p. lxvii.
[5] See Higgins, "Hague Peace Conferences," 493. The United States did not sign this declaration.

"3. To use torpedoes which do not become harmless when they have missed their mark.

"ART. II. It is forbidden to lay automatic contact mines off the coast and ports of the enemy, with the sole object of intercepting commercial shipping."

The World War showed that many of the accepted rules of war are antiquated and that new rules should be adopted.

Retaliation, devastation, refusal of quarter, and other severe methods once resorted to were, before the World War, regarded as forbidden, except as punishment for violation of the laws of war.

114. Privateers

A private armed vessel owned and manned by private persons and under a state commission called a "letter of marque," [1] is a privateer.

This method of carrying on hostilities has gradually met with less and less favor.[2] From the early days of the fifteenth century neutrals were given commissions. Toward the end of the eighteenth century treaties and domestic laws gradually provided against this practice, though letters of marque were offered to foreigners by Mexico in 1845, and by the Confederate States in 1861–1865. These were not accepted, however, as such action had then come to be regarded as piracy by many states. Privateering of any kind, as Kent said, "under all the restrictions which have been adopted, is very liable to abuse. The object is not fame or chivalric warfare, but plunder and profit. The discipline of the crews is not apt to be of the highest order, and privateers are often guilty of enormous excesses, and become the scourge of neutral commerce. . . . Under the best regulations, the business tends to blunt the sense of private

[1] For form, see United States *v.* Baker, 5 Blatchford, 6; 2 Halleck, 110.

[2] See article of Dr. Stark on "Privateering," in Columbia University Publications (1897), Vol. VIII, No. 3.

right, and to nourish a lawless and fierce spirit of rapacity." [1] Under the Declaration of Paris, 1856, "Privateering is, and remains, abolished." [2] This declaration was agreed to by the leading states of the world, with the exception of the United States, Spain, Mexico, Venezuela, and China. In the Spanish-American War of 1898 the United States and Spain observed its generally accepted principles.[3] The importance of the subject of privateering is now largely historical, as it is doubtful whether any civilized state would resort to this method of carrying on maritime war.

115. Voluntary and Auxiliary Navy

(*a*) The relationship of private vessels to the state in time of war, which had been settled by the Declaration of Paris in 1856, was again made an issue by the act of Prussia in the Franco-German War. By a decree of July 24, 1870, the owners of vessels were invited to equip them for war and place them under naval discipline. The officers and crews were to be furnished by the owners of the vessels, to wear naval uniform, to sail under the North-German flag, to take oath to the articles of war, and to receive certain premiums for capture or destruction of the enemy's ships. The French authorities complained to the British that this was privateering in disguise and a violation of the Declaration of Paris. The law officers of the crown declared that there was a "substantial difference" between such a volunteer navy and a system of privateering, and that the action of Prussia was not contrary to the Declaration of Paris. With this position some authorities agree, while others dissent. The weight of the act as a precedent is less on account of the fact that no ships of this navy ever put to sea. The similar plan of

The organization of a volunteer navy.

[1] Kent Com., 97.
[2] Appendix, p. xxxi.
[3] Proclamations and Decrees (April 25, 1898), p. 77.

Greece for a volunteer navy in 1897 was never put into operation.[1]

Russia, in view of possible hostilities with England in 1877–1878, accepted the offer of certain citizens to incorporate into the navy, during the war, vessels privately purchased and owned. Vessels of this character were numbered in the "volunteer fleet," and though privately owned and managed from 1886, were under the Admiralty. There seems to be little question as to the propriety of such a relationship between the state and the owners of vessels which may be used in war.

(*b*) Still less open to objection is the plan adopted by Great Britain in 1887 and by the United States in 1892, by which these governments, through agreements with certain of their great steamship lines, can hire or purchase at a fixed price specified vessels for use in case of war. The construction of such vessels is subject to government approval, and certain subsidies are granted to these companies. In time of war both officers and men must belong to the public forces. The plans of Russia, Great Britain, and the United States have met with little criticism.[2]

The use of auxiliary vessels.

The method of commissioning and of employing auxiliary vessels has given rise to much discussion, particularly during the Russo-Japanese War in 1905 and the World War in 1914–1918. Certain states contend that the conversion of a merchant ship into a war ship should not be permitted on the high sea. Other states take the opposite position. The Hague Conference of 1907, as the London Naval Conference of 1908–1909, was unable to reach an agreement as to the matter of conversion of merchant ships into war ships on the high seas.

There is, however, a general recognition of the necessity for control of a converted ship by direct authority of the state whose flag it bears. Such a ship should also have the external

[1] R. D. I., IV, 695.

[2] See Act of May 10, 1892; 27 U. S. Sts. at Large, 27.

marks of a war ship and should observe the laws and customs of war, and the belligerent making such conversion should immediately make it public.

116. Armed Merchant Vessels

(*a*) During the World War resort to the use of armed merchant vessels was common. In the case of the *Nereide*, 1815, which was frequently cited, it was said, "A belligerent has a perfect right to arm in his own defence." [1] On March 26, 1913, Mr. Churchill, representing the British Admiralty, said in the House of Commons, "Hostile cruisers, wherever they are found, will be covered and met by British ships of war, but the proper reply to an armed merchantman is another merchantman armed in her own defence." [2] And on March 17, 1914, he said, "They are not allowed to fight with any ships of war." [3]

British attitude.

In August and September, 1914, the United States and Great Britain exchanged numerous notes on the subject of armed merchant vessels.[4] The note of August 25, 1914, gave "the United States Government the fullest assurances that British merchant vessels will never be used for purposes of attack, that they are merely peaceful traders armed only for defence, that they will never fire unless first fired upon, and that they will never under any circumstances attack any vessel." [5]

(*b*) On September 19, 1914, the State Department of the United States made known its attitude in a memorandum on "The status of armed merchant vessels," admitting defensive armament and trying to fix its limit by physical description and evidence "as to the intended use." [6] This memorandum allowed six-inch guns astern, etc. The attitude taken in this memorandum became the sub-

Attitude of United States.

[1] 9 Cr., 388.
[2] 50 Parliamentary Debates (1913), 1776.
[3] 59 *Ibid.*, 1925.
[4] Special Sup. A. J., July, 1915.
[5] *Ibid.*, p. 230.
[6] *Ibid.*, p. 312.

ject of much note-writing, and on January 18, 1916, the United States attempted to obtain a *modus vivendi* in accordance with which submarines should conform to rules for surface vessels of war in exercising the right of visit, search, and capture, and merchant vessels should carry no armament whatsoever. The State Department said, after discussing the changed conditions on the seas, owing to the disappearance of pirates and other dangers, " consequently, the placing of guns on merchantmen at the present day of submarine warfare can be explained only on the ground of a purpose to render merchantmen superior in force to submarines and to prevent warning and visit and search by them. Any armament, therefore, on a merchant vessel would seem to have the character of an offensive armament." [1] The belligerents did not agree upon the suggested *modus vivendi*.

(*c*) The Netherlands Government issued its neutrality proclamation on August 5, 1914, and Article 4 provides " No warships or ships assimilated thereto belonging to any of the belligerents shall have access to said (Netherlands) territory." Under this Article armed merchant vessels were excluded from Dutch waters. The Dutch Government stated that since these vessels were armed to perform, in case of need, an act of war, the Government was obliged to consider armed merchant vessels assimilated to vessels of war, and the Dutch Government maintained its position in spite of protests from both belligerent parties.

Attitude of Netherlands.

(*d*) The Conference on Limitation of Armament by the Treaty in relation to the Use of Submarines and Noxious Gases in Warfare, February 6, 1922, aimed to regularize the use of submarines,[2] but apparently expected the use of armed merchant vessels to continue, as there was inserted as Article 14 of the Treaty Limiting Naval Armament a provision for stiffening the decks of mer-

Limitation of Armament Conference.

[1] Special Sup. A. J., July, 1915, p. 312. [2] Appendix, p. cvii.

chant vessels " for the mounting of guns not exceeding 6 inch calibre."

Many of the problems involved in the use of armed merchant vessels still remain unsolved.[1] It would seem that the ultimate and logical conclusion will be that vessels of war, whether surface or under-sea vessels, must conform to the laws of war, and merchant vessels must remain merchant vessels and conduct themselves accordingly.

117. Capture, Destruction, and Ransom

Prior to the World War, 1914, for more than one hundred years the capture of private property at sea was regarded with disfavor both on the continent of Europe and in America.

(*a*) The attitude of the United States is shown by the provision in the Treaty with Prussia of 1785, whereby merchant vessels of either state are to pass " free and unmolested." [2] John Quincy Adams, in 1823, asked England, France, and Russia to exempt hostile private property from capture. The proposition was not accepted.[3] The United States withheld its approval of the Declaration of Paris of 1856 because private property was not exempted from capture. The resolution in the United States House of Representatives of Mr. Gillett of Massachusetts, of April 25, 1898, exempting merchant ships from capture, failed to pass, the argument being advanced that Spain had shown a lack of reciprocity. On April 28, 1904, the United States Congress passed a resolution favorable to the exemption of innocent private property at sea. States in practice have attempted to introduce the principle of exemption of private property from capture, as at the inception of the Franco-German War in 1870. The American delegates to the Second Peace Conference at The Hague strenuously endeavored,

The exemption from capture of persons and property at sea.

[1] 2 Hyde, pp. 402, 466.
[2] 2 Treaties, 1477.
[3] 7 Moore, § 1198.

but without success, to induce the powers represented to exempt private property at sea from capture. In recent years the principle of exemption of private property from capture has received decreasing support.

Late declarations and regulations provided that officers and crews of captured enemy merchant vessels might be made prisoners of war, if by training or enrollment they would be immediately available for naval service.[1]

Passengers on such vessels were to be given all convenient consideration.[2]

Any person might be detained as a witness.

At The Hague in 1907, by Convention ratified only by about one half of the states, more general rules were proposed.[3]

(*b*) Capture is complete when the hope of recovery has ceased and surrender has taken place. It was long held that twenty-four hours of possession constituted valid capture. In earlier times the capture was complete when the property seized was brought within the firm possession of the captor, as within a camp, fortress, fleet, etc. This rule seems to be more equitable, as the effective possession is a better ground than the lapse of time.

Valid capture.

The evidence of intention to capture must be shown by some act, such as the placing of a prize crew or prize master on board a captured vessel, though the vessel has been held to be under the control of the captor, even when by reason of the weather no one has been placed on board.[4]

(*c*) The captor should bring his enemy prize into port for adjudication by the court because there may be neutral property or rights involved. The prize is to be disposed of only by state authority.

Captured vessel as a prize.

(*d*) However, an enemy's vessel may be destroyed when it is no longer seaworthy, when it impedes

[1] Japanese Regulations, 1904, Art. 50.
[2] *Ibid.*, Art. 69.
[3] Appendix, p. lxxxiv, Ch. III.
[4] The *Grotius*, 9 Cr., 368, 370.

unduly the progress of the capturing force, when its recapture is threatened by the enemy, when the capturing force is unable to place a sufficient prize crew on board without impairing too much its own efficiency, and when a port of the capturing force to which the prize may be brought is too far away.[1] Before destruction the personnel must be placed in safety. The United States, in the War of 1812, directed its officers to destroy all the enemy's vessels captured, unless very valuable and near a port. This was necessary on account of its lack of forces.[2] During the World War destruction of vessels without due regard to law was common.[3]

Destruction of prize.

(*e*) Sometimes the original owner was allowed to ransom by repurchase, property which had been captured. In such case the transaction was embodied in a "ransom bill," by which the master agreed that the owner would pay to the captor a certain sum of money. A duplicate copy of this bill served as a safe-conduct for the ransomed vessel so long as there was no departure from its terms in regard to the course to be sailed, the ports to be entered, the time of sailing, etc. The contract was not violated when the ransomed vessel was driven from her course by stress of weather or by circumstances beyond her control.

Practice in regard to ransom.

The captor might take from the captured vessel a hostage for the fulfillment of the ransom contract. Should the captor's vessel be taken with the hostage and ransom bill on board by a vessel of the enemy, the ransom bill is discharged. Some of the European states forbid the practice, others limit it, and others, like the United States, no longer resort to ransom.

118. Aerial Warfare

(*a*) Balloons were used in war in the eighteenth and nine-

[1] See rules of the "Inst. of Int. Law," 1882, "Annuaire," 1883, p. 221; *ibid.*, 1913, p. 669.

[2] See Sec. 136 (*h*) for destruction of neutral prizes, p. 328.

[3] Fauchille, 1383.

teenth centuries, but it was not till the twentieth century that the use of air in time of war became of great importance. Certain questions were raised during the Franco-Prussian War in 1870. The Germans threatened to treat observers in balloons as spies, but such persons lacked the essential attributes of spies and none were ever executed. Important persons also passed over the siege lines about Paris in balloons.

Early war use of air.

(*b*) By the declaration of the Hague Conference in 1899 "the contracting parties agree to prohibit, for a term of five years, the launching of projectiles and explosives from balloons or by other new methods of a similar nature." This declaration was renewed at the Hague Conference of 1907, but was not generally ratified, owing to the fact that much progress in the use of aircraft had been made in the period between the two conferences. Even though the provisions of the declaration expired by limitation during the Russo-Japanese War in 1904, both parties continued to observe its obligations. Convention IV of 1907, Laws and Customs of War on Land, referring to bombardment, was expanded by the insertion of the words "by whatever means" so that the article read: "Art. 25. The attack or bombardment, by whatever means, of towns, villages, habitations or buildings which are not defended, is prohibited." Some maintained that even though these were rules for war on land, this article covered aerial bombardment. Conferences upon aerial matters have been frequent since 1907. The Institute of International Law has considered the laws for the air at several meetings. The development of law has in general tended toward the maintenance of the idea that jurisdiction in the air belongs to the subjacent state.[1] The Sub-Committee appointed at the Peace Conference in 1919 accepted this principle. Accordingly the general principles as to the conduct of war would

Twentieth century rules.

[1] N. W. C. 1912, p. 56.

also apply to aerial warfare. The Conference on Limitation of Armament, Washington, 1922, did not consider it expedient to draft detailed regulations for aerial warfare.

(*c*) During the World War aircraft were generally used.[1] Each belligerent made air raids in the opponent's territory and each accused the other of unlawful acts. Some neutral states early in the War prohibited entrance of foreign balloons and aircraft above their jurisdiction, *e.g.* Switzerland, August 10, 1914; United States, as to Panama Canal Zone, November 13, 1914. When the United States entered the World War domestic legislation forbade alien enemies to possess, use, or operate any aircraft, wireless apparatus or signaling device. Great Britain presumed hostile intent in any enemy aircraft approaching a merchant vessel. The Netherlands interned belligerent aircraft alighting in Dutch jurisdiction.

Aircraft in World War.

119. Postliminium

(*a*) The word "postliminium" is derived from the Roman Law idea that a person who had been captured and afterwards returned within the boundaries of his own state was restored to all his former rights, for *jus postliminium* supposes that the captive has never been absent.[2] The attempt to incorporate this fiction into international law has obscured the fact for which it stands. The fact is that the rights of an owner are suspended by hostile occupation or capture. These rights revive when the occupation or capture ceases to be effective. Acts of the enemy involving the captured person or property while in the enemy's possession are not necessarily invalidated if by the laws recognized by civilized states these acts were within his competence. Thus taxes paid during a hostile occupation or penalties for crime imposed

The jus postliminium defined.

[1] 1 Garner, pp. 458 *et seq.*

[2] Justinian, I, xii, 5.

by the invader are held to discharge the obligation as if imposed by the regular authorities.

(*b*) When the restoration of the property or territory which has been in the captor's possession is accomplished by a party other than the owner, the service of restoration should receive proper acknowledgment as in other cases of service. If territory is restored through the coöperation of an ally, the conditions of the alliance will determine the obligation of the original possessor.

Restoration of property or territory.

(*c*) Most states have definite rules as to the restoration of ships, as well as other property, and the granting of salvage. The United States provides that when any vessel or other property already captured shall be recaptured, the same not having been condemned as prize before recapture, the court shall award salvage according to law and the circumstances of the case, but not to contravene any treaty.[1] When the original crew of the vessel arise and take the vessel from their captors, it is called a rescue and the crew is not entitled to salvage. When an American ship, on a voyage to London in 1799, was captured by the French and afterward rescued by her crew, the British sailors working their passage to London in the ship were allowed salvage.[2]

Restoration of ships.

While Prussia was in possession of a section of France during the Franco-Prussian War of 1870, Prussia contracted with certain persons for a sale of a portion of the public forests in France. The purchasers paid for the privilege of felling the forests, but had not completed the cutting of the trees when the Prussian occupation ceased. The purchasers claimed that they had the right to complete their contract, but France maintained that her rights revived when the Prussian occupation ceased, and this position was accepted by Prussia in an additional article to the treaty of peace of December 11, 1871.

[1] 7 U. S. Comp. Sts. § 8426.

[2] The *Two Friends*, 1 C. Rob., 271.

120. Prisoners and Their Treatment

(*a*) "All persons who are of particular and singular use and benefit to the hostile army or its government" [1] are liable to capture. Levies *en masse* are now treated as public enemies.

Who may be made prisoners. Within recent years persons who by reason of their trades or training may be of special use to the enemy are included among those liable to capture; as the personnel of captured merchantmen unless exempt by special convention.

It is now a fundamental principle of law that the treatment of a prisoner of war is not to be penal, unless the penalty is imposed for some act committed after his capture. A prisoner of war is subject to such restraint as is necessary for his safe custody. A prisoner of war may be killed while attempting to escape or may be disciplined for attempting to escape, but if he escapes and is recaptured, no punishment other than such confinement as is necessary for his safe keeping is allowable.

(*b*) It is forbidden to declare that no quarter will be given. Those who have violated the laws of war or the principles

Quarter and retaliation. of humanity are liable to retaliation as a measure of protective retribution only. It "shall only be resorted to after careful inquiry into the real occurrence, and the character of the misdeeds that may demand retribution." [2]

(*c*) "Prisoners of war may be interned in a town, fortress, camp, or any other locality, and bound not to go beyond certain

Internment. fixed lines; but they can only be confined as an indispensable measure of safety and only while the circumstances which necessitate the measure continue to exist." [3]

(*d*) "The state may utilize the labor of prisoners of war according to their rank and aptitude, officers excepted. Their

[1] Instr. U. S. Armies, 50; Appendix, pp. xi, xii.
[2] Instr. U. S. Armies, 28. See Appendix, p. vii.
[3] Appendix, p. lxiv.

tasks shall not be excessive and shall have nothing to do with the military operations. . . . The wages of the prisoners shall go towards improving their position, and the balance shall be paid them at the time of their release, after deducting the cost of their maintenance." [1]

Employment.

(*e*) The exchange of prisoners of war is a purely voluntary act on the part of the states at war. This takes place under an agreement called a "cartel." The exchange is usually rank for rank, number for number, value for value, though it is sometimes necessary to agree upon certain conventional values when those of the same rank are not among the captives, as in 1862, when the United States exchanged a captain in the army for six privates, etc.

Exchange.

(*f*) Prisoners of war may be released on parole, which is a promise to do or to refrain from doing certain acts in consideration of the grant of freedom in other respects. The punishment for breach of parole may be determined by the court.[2]

Parole.

(*g*) The sick and wounded taken in the field become prisoners of war. Their treatment is now generally determined by the provisions of the Geneva Convention of 1906. This convention provides for the immunity and for protection of hospital, ambulances, and those engaged in the care of the sick and wounded, and for distinctive marks for this service, particularly the Red Cross.[3]

Sick and wounded.

(*h*) The Hague Convention provides for a Bureau of Information to answer inquiries, to preserve property found on battlefields or left by prisoners, etc.[4]

Bureau of Information.

(*i*) The treatment of prisoners of war during the World War was much criticized. Often the rules upon which states had

[1] Appendix, p. lxiv.

[2] See, as to prisoners of war, Appendix, pp. xxiii, lxiv.

[3] For details, see Geneva Convention, Appendix, p. xxxiii; Holls, "The Hague Peace Conference," 120 *et seq.*

[4] Appendix, p. lxv.

agreed were not observed. The rules themselves were in some respects defective or not sufficiently full. This was evident in the Berne Conference on Prisoners of War which reached an agreement embodied in 185 articles[1] on November 11, 1918.

Prisoners in World War.

121. Non-hostile Relations of Belligerents

(*a*) In time of war it is necessary that belligerents should have certain relations not strictly hostile. Negotiations are often opened under a flag of truce. In regard to this the Brussels Code, Article 43, with which Article XXXII of the Hague Convention of 1907 respecting the Laws and Customs of War on Land is in practical accord, provides: —

Flag of truce.

"An individual authorized by one of the belligerents to confer with the other on presenting himself with a white flag, accompanied by a trumpeter (bugler or drummer), or also by a flag-bearer, shall be recognized as the bearer of a flag of truce. He as well as the trumpeter (bugler or drummer), and the flag-bearer, who accompanies him, shall have the right of inviolability."

He may be accompanied, "if necessary, by a guide and an interpreter." A commander is not obliged to receive the bearer of a flag of truce, and may take necessary measures to prevent injury on account of his presence. He may be blindfolded, detained at an outpost, or be put under other restrictions. If the bearer take advantage of his privilege to spy upon the enemy, he is liable to treatment as a spy, though he may report such military information as he may acquire without effort on his own part. If a bearer present himself during active operations, firing need not necessarily cease, and the bearer is liable to such consequences as his act may bring upon himself.

"In operations afloat the senior officer alone is authorized to dispatch or to admit communication by flag of truce; a vessel

[1] 13 A. J. I. L. Sup., Jan., 1919, No. 1; 2 Garner, chaps. XXI–XXII.

in position to observe such a flag should communicate the fact promptly. The firing of a gun by the senior officer's vessel is generally understood as a warning not to approach nearer. The flag of truce should be met at a suitable distance by a boat or vessel in charge of a commissioned officer, having a white flag plainly displayed from the time of leaving until her return." [1]

Cartels.

(*b*) Cartels are agreements made to regulate intercourse during war. Such conventions may regulate postal and telegraphic communication, the reception of flags of truce, the exchange of prisoners, the care and treatment of the same and of the sick and wounded.

A cartel ship is a vessel sailing under a safe-conduct for the purpose of carrying exchanged prisoners. When thus employed the vessel is not subject to seizure, although this exemption does not extend to a voyage from one port to another in her own state for the sake of taking on prisoners. The immunity is lost if the vessel departs from the strict line of service by engaging in ordinary commerce, transportation, or hostile acts.[2] Such a vessel may carry one gun for the purpose of salutes.

(*c*) Passports, safe-conducts, and safeguards are sometimes given in time of war.

Passports, safe-conducts, and safeguards.

A passport is a written permission given by the belligerent government or by its authorized agent to the subject of the enemy state to travel generally in belligerent territory.

A safe-conduct is a pass given to an enemy subject or to an enemy vessel, allowing passage between defined points. Safe-conducts are granted either by the government or by the officer in command of the region within which it is effective.[3]

A safeguard is a protection granted by a commanding officer

[1] "International Law," Naval War College, 2d ed., p. 93.

[2] The *Venus*, 4 C. Rob., 355.

[3] Appendix, p. xviii.

either to person or property within his command. "Sometimes they are delivered to the parties whose persons or property are to be protected; at others they are posted upon the property itself, as upon a church, museum, library, public office, or private dwelling."[1] When the protection is enforced by a detail of men, this guard must use extreme measures, if necessary to fulfill their trust, and are themselves exempt from attack or capture by the enemy.

(*d*) A license to trade is a permission given by competent authority to the subject of that authority or to another to carry on trade even though there is a state of war. These licenses may be general or special. A general license grants to all the subjects of the enemy state or to all its own subjects the right to trade in specified places or in specified articles. A special license grants to a certain person the right to trade in the manner specified in his license. Neutrals may receive a license to trade in lines which otherwise would not be open to them.

License to trade.

A general license is granted by the head of the state. A special license, valid in the region which he commands, so far as his subordinates are concerned, may be granted by a subordinate. His superior officers are not necessarily bound by his act, however.[2]

It is held that a license must receive a reasonable construction. In general, fraud vitiates a license; it is not negotiable unless expressly made so; a fair compliance in regard to the terms as to goods is sufficient; a deviation from the prescribed course by a vessel invalidates the license unless caused by stress of weather or by accident; and a delay in completing a voyage within the specified time invalidates the license unless caused by enemy or the elements.[3] When a license becomes void, the vessel is liable to the penalties which would fall upon it if it had committed the act without license.

[1] 2 Halleck, p. 361. [2] The *Sea Lion*, 5 Wall, 630. [3] Hall, pp. 538-552.

(*e*) The cessation of hostilities for a time is sometimes brought about by agreement between the parties to the conflict. When this cessation is for a temporary or military end, and for a short time or within a limited area, it is usually termed a suspension of hostilities. When the cessation is quite general, for a considerable time, or for a political end, it is usually termed a truce or armistice.

Suspension of hostilities, truce, armistice.

Acts of hostility done in ignorance of the existence of the cessation of hostilities are not violations of the agreement unless there has been negligence in conveying the information to the subordinates. Prisoners and property captured after the cessation in a given region must be restored. During the period of the truce, the commercial and personal intercourse between the opposing parties is under the same restrictions as during the active hostilities, unless there is provision to the contrary in the agreement. The relative position of the parties is supposed to be the same at the end of the truce as at the beginning.

Hall says: "The effect of truces and like agreements is therefore not only to put a stop to all directly offensive acts, but to interdict all acts tending to strengthen a belligerent which his enemy apart from the agreement would have been in a position to hinder." [1] Late practice accords with the doctrine that what is not prohibited in the terms of the armistice is permitted if not in the nature of actual hostilities.[2]

The provisioning of a besieged place during a truce has been the subject of some difference of opinion. If the conditions of the truce are to be fair to the besieged party, that party must be allowed to bring in a supply of provisions equal to the consumption during the continuance of the truce.[3] At the present time this matter is usually provided for in the terms of the truce.

[1] Hall, p. 585. [2] Spaight, p. 236. [3] Calvo, "Droit Int.," §§ 2440–2446.

A truce or other form of cessation of hostilities, if for a definite time, comes to an end by the expiration of the time limit; if for an indefinite time, by notice from one party to the other or is terminated by the violation of the conditions by either of the parties. A violation of a truce by an individual renders him liable to such punishment as his state may prescribe.[1]

(*f*) The armistice of Roumania with Germany, Austria, Turkey, and Bulgaria, December 9, 1917, and of Russia with the same states on December 16, 1917, were military in character. The same may be said of the armistice of Bulgaria, September 29, 1918, and of Turkey, October 30, 1918, with the Allies. The armistice between Austria-Hungary and the Allied and Associated Powers, November 3–13, 1918, made detailed provision for surrender of or withdrawal from certain areas and for surrender of material and performance of certain services. The armistice between Germany and the Allied and Associated Powers was very comprehensive, involving provisions for surrender, and forming a basis for peace negotiations.

Armistices in World War.

(*g*) A capitulation is an agreement defining the conditions of surrender of military forces, places, or districts within the command of an officer. Such agreements are purely military and can have no political force. The capitulation agreed upon between Generals Sherman and Johnston, in 1865, was not sanctioned because it involved political provisions. By the capitulation of Santiago, July, 1898, the American commander agreed to transport the Spanish troops to Spain. The conditions involved in a capitulation may vary greatly, but at the present time it is usually possible to obtain the sanction of the political authority before entering upon an agreement, owing to the improved methods of communication. It is therefore hardly probable that the terms of

Capitulation.

[1] ? Halleck, 345 *et seq.*

capitulations will be set aside, as in the celebrated case of El Arisch, in 1800. Agreements made by officers not possessing proper authority or made in excess of authority, are called *sponsions* or *sub spe rati*, and require ratification or acceptance by the state to render them effective.[1]

[1] See 1 Halleck, 297.

OUTLINE OF CHAPTER XXI

TERMINATION OF WAR

122. METHODS OF TERMINATION OF WAR.
123. BY CONQUEST.
124. BY CESSATION OF HOSTILITIES.
125. BY A TREATY OF PEACE.
   (*a*) Matters covered by a treaty of peace.
   (*b*) When a treaty of peace is effective.

CHAPTER XXI

TERMINATION OF WAR

122. Methods of Termination

War may come to an end, (1) by the complete submission of one of the parties to the conflict or by conquest, (2) by the cessation of hostilities between the parties to the conflict, or (3) by a treaty of peace duly concluded.[1]

The object of war in early times was often conquest, and the conflict terminated only with the submission of one of the parties. This end is at present usually disavowed, and the object of war is proclaimed to be some purpose that will meet with as little disapproval as possible.[2] The conditions under which the war will be brought to an end will usually be in some measure determined by the object for which the war was undertaken.

123. By Conquest

Conquest in the complete sense, as in the case of the *debellatio* of the Romans, is not now common.[3] This implies a submission of one of the parties without condition. There have been examples of absorption of the sovereignty of the vanquished state in recent times, as in the Prussian Decree of September 20, 1866, by which conquered Hanover, Hesse, Nassau, and Frankfort were incorporated into the Prussian state. Similarly, some of the Italian states were absorbed by the kingdom of Italy after the Treaty of Villafranca, 1859, and Madagascar became a part of France in 1896.

Conquest is held to be complete when the fact is evident

[1] Heffter-Geffcken, "Droit Int.," II. §§ 176–190.
[2] N. W. C. 1917, 15; see above, sec. 99.
[3] Phillipson, pp. 9 ff.

from actual, continued, and recognized possession. All of these evidences may not be present in a given case, but if the intention and the fact of the conquest and the submission are fully shown, it is sufficient to constitute validity.

124. By Cessation of Hostilities

Certain wars have terminated by the simple cessation of hostilities. Cases of such termination are rare. Such a method leaves in doubt the relations of the parties to the conflict, and occasions inconvenience to all states which may have intercourse with the contestants. The war between Sweden and Poland in 1716, and also the war between France and Spain in 1720, came to an end in this way. The war between Spain and her American colonies ceased in 1825, but diplomatic relations were not established till 1840, and the independence of Venezuela was not recognized till 1850. After the hostilities between France and Mexico, 1862–1867, no diplomatic relations were entered into till 1881. It is only fair to neutrals that a declaration of the conclusion of hostilities should be made. While hostilities between the United States and Germany ceased under the Armistice, November 11, 1918, the state of war continued till exchange of Peace Treaty ratifications three years later.

125. By a Treaty of Peace

War is most often terminated by a treaty of peace, which is usually a diplomatic agreement upon the manner of cessation of hostilities and upon the conditions of the reëstablishment of friendly relations.[1] In recent years such treaties have often been preceded by preliminary agreements. These are sometimes preceded by an armistice in order that the terms may not be changed from day to day by the current fortunes of war, as was the case in the discussions pending the Treaty of

[1] Phillipson, Termination, 155.

Westphalia in 1648. No armistice was made for facilitating the Russo-Japanese peace negotiations in 1905. In the war between China and Japan, in 1894 1895, an agreement for the suspension of hostilities was made on March 30, 1895, but the treaty of peace was not signed till April 17th. These preliminary agreements may sometimes be made through the friendly offices of a third power, as in the protocol of August 12, 1898, in regard to the suspension of hostilities between Spain and the United States. The ambassador of France acted for Spain.[1] These preliminary agreements can be concluded only by those persons delegated for the purpose, and they are as binding as any international agreement in the matters upon which they touch.

After preliminary correspondence with the United States through the Swiss Minister, Germany expressed its willingness to accept the "fourteen points" set forth in the message of President Wilson, January 8, 1918, "and in his subsequent pronouncements" "as a basis for the peace negotiations."[2] An armistice was signed November 11, 1918. Treaty negotiations among the Allied and Associated Powers began January 18, 1918. The draft of the treaty was submitted to German representatives May 7, 1919, and signed June 28, 1919.

Matters covered by a treaty of peace.

(*a*) A treaty of peace usually covers, (1) the cessation of hostilities, (2) the subjects which have led to war,[3] (3) agreements for immunity for acts done during the war without sufficient authority or in excess of authority. Such acts might otherwise become bases for civil or criminal process. Acts not consequent upon the existence of war, but such as are actionable under the ordinary laws of the state, as for violation of private contract, ordinary debts, etc., are not included unless

[1] 30 U. S. Sts. at Large, 1742. [2] Sup. A. J. I. L. vol. 13, p. 85.

[3] The Treaty of Ghent, Dec. 24, 1814, between U. S. and Great Britain is a marked exception. 1 Treaties, 612; Wheaton, "Hist. Int. Law," 585; Schurz, "Henry Clay," I, pp. 105 *et seq.*

there is a direct stipulation to that effect. This immunity is commonly called amnesty. (4) Provision for the release of the prisoners of war is often included. (5) The renewal of former treaties is provided for in many peace agreements. (6) Special provision may be made for cession of territory, indemnity, boundaries, or other contingent points.[1]

(*b*) A treaty of peace is usually held to be effective from the date of signature, or from the date set in the treaty. Provisions fixing the time at which hostilities shall cease at different points are common. Acts of war committed after the conclusion of peace or after the official notice of the termination of hostilities, are void.[2] The Treaty of Frankfort, 1871, provides that maritime captures not condemned at the conclusion of the war are not good prize.

When a treaty of peace is effective.

"The general effect of a treaty of peace is to replace the belligerent countries in their normal relation to each other." [3] In case no stipulations or public interests are to the contrary, the doctrine of *uti possidetis* applies, by which the property and territory in the actual possession of either of the belligerents at the conclusion of the war vests in the one having possession.[4]

Private rights suspended during the war revive on the conclusion of peace. Though it was once held that debts could be confiscated during war, this is now nowhere maintained.[5] In such cases the obligation revives on the conclusion of peace, and by the statute of limitations the period of the war is not reckoned in the time specified as the period at which debts become outlawed.[6]

[1] Treaty between Spain and U. S., Dec. 10, 1898, 30 U. S. Sts. at Large, 1754; 2 Treaties, 1690.

[2] Case of *Swineherd*, 1801, 1 Kent Com., 173, note (*b*); *Sophie*, 1 Kent Com., 174; 6 C. Rob., 138.

[3] Hall, p. 598. [4] Sanchez *v.* United States, 216 U. S. 167; 2 Hyde, 856.

[5] See Phillipson, pp. 322 ff., for succession, public debts.

[6] Hanger *v.* Abbott, 6 Wall, 532.

PART FIVE

INTERNATIONAL LAW OF NEUTRALITY

OUTLINE OF CHAPTER XXII

DEFINITION AND HISTORY OF NEUTRALITY

126. DEFINITION OF NEUTRALITY.

127. FORMS OF NEUTRALITY AND OF NEUTRALIZATION.

- (*a*) Neutralized states are bound to refrain from offensive hostilities.
  - (1) Neutralization of Switzerland and Belgium.
- (*b*) A portion of a state may be the subject of an act of neutralization.
- (*c*) The neutralization of certain routes of commerce.
- (*d*) The Geneva Convention of 1906 neutralized persons and things.

128. HISTORY OF NEUTRALITY.

- (*a*) Early conceptions of neutrality.
- (*b*) The United States and the principles of neutrality.

129. DECLARATION OF NEUTRALITY.

130. TWO CLASSES OF RELATIONS BETWEEN NEUTRALS AND BELLIGERENTS.

- (*a*) Between neutral states and belligerent states as states.
- (*b*) Between the states and individuals.

CHAPTER XXII

DEFINITION AND HISTORY OF NEUTRALITY

126. Definition of Neutrality

NEUTRALITY is the relation which exists between states which take no part in the war, and the belligerents.[1] Impartial treatment of the belligerents is not necessarily neutrality. The modern idea of neutrality demands an entire absence of participation, direct or indirect, however impartial it may be.

127. Forms of Neutrality and of Neutralization

The first form of neutrality is what was formerly known as perfect neutrality, in distinction from imperfect neutrality which allowed a state to give to one of the belligerents such aid as it might have promised by treaty entered into before and without reference to the war. At the present time the only neutrality that is recognized is perfect, *i.e.* an entire absence of participation in the war. Costa Rica stating on April 12, 1917, a year before declaring war against Germany, that it would permit "the use of its waters and ports for war needs by the American Navy" could not legally claim to be neutral.[2] A second form of neutrality is commonly known as armed neutrality. This implies the existence of an understanding, on the part of some of the states not parties to the contest, in accordance with which they will resist by force certain acts which a belligerent may claim the right to perform. The armed neutralities of February 28, 1780, and of December 16, 1800, defended the principle of "free ships, free goods."

Neutralization is an act by which, through a conventional agreement, the subject of the act is deprived of belligerent

[1] The *Three Friends*, 166 U. S. 1, 52. [2] N. W. C. 1917, 77.

capacity to a specified extent. Neutralization may apply in various ways.

(*a*) Neutralized states are bound to refrain from offensive hostilities, and in consequence cannot make agreements which may demand such action. Thus it was recognized that Belgium itself, a neutralized state, could not guarantee the neutrality of Luxemburg in the Treaty of London, in 1867. Belgium was, however, a party to the Treaty of Berlin of 1885, agreeing to respect the neutrality of the Kongo State. This agreement "to respect" did not carry with it the obligation to defend the neutrality of the Kongo State.

Offensive hostilities forbidden neutralized states.

The important instances of neutralization were those agreed upon by European powers. By the declaration signed at Vienna, March 20, 1815, the powers (Austria, France, Great Britain, Prussia, and Russia) "acknowledged that the general interest demands that the Helvetic States should enjoy the benefits of perpetual neutrality," and declared "that as soon as the Helvetic Diet should accede to the stipulations" prescribed, her neutrality should be guaranteed.[1] The Swiss Confederation acceded on May 27, 1815, and the guaranteeing powers gave their acknowledgment on November 20, 1815.[2] The powers also guaranteed the neutrality of a part of Savoy at the same time. The neutralization of Belgium was provided for by Article VII of the Treaty of London, of November 15, 1831, "Belgium, within the limits specified in Articles I, II, and IV, shall form an independent and perpetually Neutral State. It shall be bound to observe such Neutrality towards all other States."[3] Like provision was in the treaty of 1839.[4]

Neutralization of Switzerland and Belgium.

(*b*) A portion of a state may be the subject of an act of

[1] I Hertslet, 64.

[2] *Ibid.*, 370; see also "La Neutralité de Suisse," S. Bury, R. D. I., II, 636.

[3] II Hertslet, 863.

[4] Wilson, Neutralization, 4 Yale Review, 474.

neutralization, as in the case of the islands of Corfu and Paxo by the Treaty of London, of March 29, 1864. By Article II, "The Courts of Great Britain, France, and Russia, in their character of Guaranteeing Powers of Greece declare, with the assent of the Courts of Austria and Prussia, that the Islands of Corfu and Paxo, as well as their Dependencies, shall, after their Union to the Hellenic Kingdom, enjoy the advantages of perpetual Neutrality. His Majesty the King of the Hellenes engages, on his part, to maintain such Neutrality." [1]

Neutralization of a portion of a state.

(*c*) The neutralization of certain routes of commerce has often been the subject of convention. The United States guaranteed the "perfect neutrality" [2] of the means of trans-isthmian transit when the State of New Granada controlled the Isthmus of Panama in 1846. By the Treaty of 1867 with Nicaragua the United States guaranteed "the neutrality and innocent use" of routes of communication across the state of Nicaragua.[3] The Nine Powers by the Convention of Constantinople, of October 29, 1888, though Great Britain made certain reservations, agreed, by a conventional act upon "a definite system destined to guarantee at all times, and for all the powers, the free use of the Suez Maritime Canal." [4] Full provisions for the maintenance of the neutrality of the canal were adopted at this time also. Substantially the same rules were embodied in the Treaty between the United States and Great Britain, concluded November 18, 1901, in regard to the construction of the canal across the Isthmus of Panama.

Neutralization of routes of commerce.

(*d*) The Geneva Convention of 1906, superseding that of 1864, made immune persons and things employed in the amelio-

[1] III Hertslet, 1592.

[2] Art. XXXV, Treaty of Dec. 12, 1846; Treaties of U. S., 204.

[3] Art. XV, Treaty of Jan. 21, 1867; Treaties of U. S., 1784.

[4] Parl. Papers, 1889, Commercial, No. 2. See also Holland, "Studies in Int. Law," p. 269.

ration of the condition of the sick and wounded in the time of war.[1] By the Hague Convention of 1907 hospital ships properly certified and designated by flags and by bands of color on the outside are exempt from capture by general practice.[2]

The Geneva Convention.

128. History of Neutrality

Neutrality as now understood is of recent growth. In early times, and in general throughout the Middle Ages, the fear of retaliation alone deterred belligerent states from hostile action against states with which they were formally at peace. A belligerent in the prosecution of war might disregard the territorial, personal, or property rights in a neutral state without violation of the principles of public law then accepted.

(*a*) A gradual formulation of principles which gave the basis of a more equitable practice came through the custom of making treaty provisions in regard to the conduct of one of the parties when the other was at war with a third state. Thus it was usually provided that no aid should be given to the third state. By the end of the seventeenth century that which had formerly been a matter of treaty stipulation became quite generally accepted as a rule of action. Grotius, in 1625, gives only about a fourth of a short chapter to the consideration of the duties of the neutral toward the belligerents and the balance of the same chapter to the duties of belligerents toward those not parties to the war. Grotius maintains that "it is the duty of those who have no part in the war to do nothing which may favor the party having an unjust cause, or which may hinder the action of the one waging a just war, . . . and in a case of doubt to treat both belligerents alike, in permitting transit, in furnishing provisions to the troops, in refraining from assisting the

Early conceptions of neutrality.

[1] Appendix, pp. xxxiii-xxxvii, Articles, 1–16. [2] *Ibid*, p. lxxviii.
[3] "De Jure Belli ac Pacis," Lib. III, C. XVII, iii, 1.

besieged." [3] In Barbeyrac's note to Pufendorf, 1706, the discussion shows that the idea of neutrality is clearer, but still confused by the attempt to admit a variety of qualified forms by which a state may be neutral in some respects and not in others.[1] Bynkershoek in 1737 said, "I call those *non hostes* who are of neither party." [2] This statement of Bynkershoek furnishes a convenient starting-point for his successors. Vattel, in 1758, accepting this definition, also says that a state may give such aid as has been promised in a treaty of alliance previously made with one of the states, and still preserve exact neutrality toward the other state.[3]

The United States and the principles of neutrality.

(*b*) By Article XVII of the Treaty of Amity and Commerce between the United States and France, in 1778, "It shall be lawful for the ships of war of either party, and privateers, freely to carry whithersoever they please the ships and goods taken from their enemies; . . . on the contrary, no shelter or refuge shall be given in their ports to such as shall have made prize of the subjects, people or property of either of the parties," except when driven in by stress of weather. By Article XXII of the same treaty, foreign privateers were not allowed to be fitted out or to sell their prizes in the ports of either party. In 1793 M. Genet, the French minister, began to fit out privateers, to give commissions to citizens of the United States to cruise in the service of France against the British, and to set up prize courts in the French consulates. He justified himself under the provisions of the Treaty of 1778. His action threatened to bring the United States into war with Great Britain and led to the enunciation of the principles by the United States authorities, of which Canning in 1823 said, "If I wished for a guide in a system of neutrality, I should take that laid down

[1] "Le Droit de la Nature et des Gens," Liv. VIII, C. VI, vii, n. 2.
[2] "Quaestiones Juris Publici," I, ix.
[3] "Droit des Gens," III, viii.

by America in the days of the presidency of Washington and the secretaryship of Jefferson." [1] This system, set forth in the President's Proclamation of December 3, 1793, declares that, in the war of France and the European powers, "the duty and interest of the United States require that they should with sincerity and good faith adopt and pursue a conduct friendly and impartial toward the belligerent powers." [2] While the Proclamation does not mention "neutrality," the orders and instructions issued in accordance with it use the word. By the Act of Congress of June 5, 1794, and by subsequent acts codified in 1818,[3] the United States assumed a position which marks an epoch in the history of neutrality. The principles then enunciated are the generally accepted rules of the present day. Great Britain passed similar enactments in 1819, and made these more definite and stringent by the Foreign Enlistment Act of 1870.[4]

129. Declaration of Neutrality

In recent years it has become customary to issue proclamations of neutrality, or to make known the attitude of the state by some public announcement. This method publishes to other states and to the subjects of the state issuing the announcement the position which the state will take during the hostilities. Ordinarily some specifications as to what may be done during the war accompany the proclamation.

In the war between the United States and Spain in 1898, and in subsequent wars, practically all the leading states of the world made known their neutrality. Germany, according to the custom in that state for twenty years preceding, made no public proclamation, but the neutrality of the Empire was announced less formally by the Emperor in a speech before the Reichstag. Germany issued a proclamation in the Russo-

[1] 5 Speeches, 50. [2] 1 Messages and Papers of the Presidents, 156.
[3] 10 U. S. Comp. Sts. §§ 10,173–10.182*a*. See Appendix, p. cxxxiv.
[4] 33 and 34 Vict., c. 90, p. 560. See also 2 Lorimer, 490.

Japanese war, 1904. The British proclamation of April 23, 1898, is, however, a very full statement of the principles which are to be observed during the hostilities.[1]

A clause from the Russian Declaration of May 2, 1898, is an example of the announcement of the general fact of neutrality: "It is with keen regret that the Imperial Government witnesses an armed conflict between two states to which it is united by old friendship and deep sympathy. It is firmly resolved to observe with regard to these two belligerents a perfect and impartial neutrality." [2]

The neutrality proclamations of the United States in 1914 and 1915 followed in general the form used in 1870, which stated principles somewhat completely.[3]

Many of the neutrality proclamations issued during the World War contained detailed provisions.[4] A few like that of Italy of August 3, 1914, merely referred to obligations existing under international law. Brazil had issued neutrality proclamations from time to time from August, 1914. In June, 1917, Brazil revoked these proclamations relating to the German Empire, though Brazil did not declare war against Germany till October 26, 1917. The revocation was made known to the United States in a note indicating that the Brazilian act was an evidence of the "continental solidarity" implied in the Monroe doctrine.[5]

130. Relations between Neutrals and Belligerents

The relations between neutrals and belligerents naturally fall into two divisions: —

(*a*) The relations *between neutral states* and *belligerent states* as states. These relations are determined by the respect for sovereignty, by international usage, and by treaties.

[1] Proc. and Decrees during the War with Spain, p. 31.

[2] *Ibid.*, p. 63. President Cleveland's neutrality proclamations as to the war in Cuba are given in 29 U. S. Sts. at Large, 870, 881.

[3] N. W. C., 1915, p. 7; 1916, p. 82. [4] *Ibid.*, pp. 10,15 *et seq.* [5] *Ibid.*, 1917, p. 64.

(*b*) Relations *between the states* and *individuals*. These relations involve: —

(1) Ordinary commerce.
(2) Contraband.
(3) Unneutral service.
(4) Visit and search.
(5) Convoy.
(6) Blockade.
(7) Continuous voyage.
(8) Prize and prize courts.

OUTLINE OF CHAPTER XXIII

RELATIONS OF NEUTRAL STATES AND BELLIGERENT STATES

131. GENERAL PRINCIPLES OF THE RELATIONS BETWEEN STATES.

132. NEUTRAL TERRITORIAL JURISDICTION.

- (*a*) Inviolability of neutral territory.
- (*b*) Passage of belligerents through neutral territory restricted.
- (*c*) Maritime jurisdiction of a neutral.
- (*d*) Neutral territory as a base of military operations forbidden.

133. REGULATION OF NEUTRAL RELATIONS.

- (*a*) Obligation of neutral state to offer asylum to belligerent troops seeking refuge.
- (*b*) Right of asylum of a belligerent vessel in a neutral port.
- (*c*) Internment of a vessel in a neutral port to escape capture.
- (*d*) Ordinary entry depends upon the will of the neutral.
- (*e*) Time of sojourn of vessels usually limited to twenty-four hours.
  - (1) Regulation by proclamation.
  - (2) Regulations in regard to vessels with prizes.
- (*f*) Internment of aircraft.

134. NO DIRECT ASSISTANCE BY THE NEUTRAL ALLOWED.

- (*a*) Military assistance on any grounds not now justified.
- (*b*) Furnishing of supplies of war not allowable.
- (*c*) Loans of money forbidden.
- (*d*) Enlistment of troops within the jurisdiction of a neutral state not permitted.

135. POSITIVE OBLIGATIONS OF A NEUTRAL STATE.

- (*a*) Obligation to restrain hostile acts.
- (*b*) Acts in themselves not necessarily warlike must be judged by inference as to their purpose.
- (*c*) Termination of neutral obligations.

CHAPTER XXIII

RELATIONS OF NEUTRAL STATES AND BELLIGERENT STATES

131. General Principles of the Relations between States

Of the general principle Wheaton says, "The right of every independent state to remain at peace whilst other states are engaged in war is an incontestable attribute of sovereignty." [1] Equally incontestable is the right of a belligerent state to demand that a state not a party to the war shall refrain from all participation in the contest, whether it be direct or indirect.

The modern tendency before the World War was to remove from the neutral all possible inconveniences which might result from war between states with which the neutral is at peace. The normal relations between neutral and neutral were unimpaired. As the neutral is at peace with the belligerents, the relations between the neutral and the belligerents were affected only so far as the necessities of belligerent operations demand. During and since the World War the question of the possibility and desirability of maintaining the principle of neutrality in future wars has been raised.

132. Neutral Territorial Jurisdiction

(*a*) One of the earliest principles to receive the sanction of theory and practice was that of the inviolability of territorial jurisdiction of neutrals. This principle has been liberally interpreted in recent times, and the tendency has been to make increasingly severe the penalties for its violation.[2]

Inviolability of neutral territory.

[1] Wheat. D., p. 509.

[2] Treaty of Versailles, Art. 231 *et seq.*

Hague Convention V of 1907 respecting the Rights and Duties of Neutral Powers provides,

"Art. 1. The territory of neutral Powers is inviolable;

(*b*) "Art. 2. Belligerents are forbidden to move troops or convoys of either munitions of war or supplies across the territory of a neutral Power."

Formerly it was held that the right of passage might be granted by a neutral to both belligerents on the same terms, or to one of the belligerents if in accord with an agreement entered into before the war. There are many examples of this practice before the nineteenth century. Belgium in 1914 properly declined Germany's proposal to allow troops to cross to make war on France. Article 14 of Hague Convention V shows the present attitude of states. "A neutral State may authorize the passage through its territory of wounded or sick belonging to the belligerent armies, on condition that the train bringing them shall carry neither combatants nor war material. In such a case, the neutral State is bound to adopt such measures of safety and control as may be necessary for the purpose." Such persons in neutral territory "must be guarded by the neutral Power, so as to insure their not taking part again in the military operations." [1]

Passage of belligerents through neutral territory.

(*c*) The rules applicable to the maritime jurisdiction of a neutral are somewhat different from those of the land. The neutral does not control with the same absolute authority the waters washing its shores and the land within its boundaries. That portion of the sea which is within the three-mile limit is for the purposes of peaceful navigation a part of the open sea. The Netherlands neutrality proclamation, August 5, 1914, excluded vessels of war from Dutch jurisdictional waters. The simple passage of ships of war through these waters may be permitted. All

Maritime jurisdiction of a neutral.

[1] Appendix, p. lxxiv.

belligerent acts within the maritime jurisdiction of a neutral are forbidden.[1]

The waters which appertain more strictly to the exclusive jurisdiction of the neutral, such as harbors, ports, enclosed bays, and the like, are subject to the municipal laws of the neutral.[2] Asylum in case of imminent danger is, however, not to be denied; otherwise these waters may be open to belligerent ships of war only on condition that they observe the regulations prescribed by the neutral. Such regulations must of course be impartial. These regulations are generally announced in the proclamations of neutrality, and during the World War[3] were for the most part modeled on the Hague Convention of 1907 concerning the Rights and Duties of Neutral Powers in Naval War.[4]

(*d*) Neutral territory may not be used as the base of military operations or for the organization or fitting out of warlike expeditions. In spite of protests much of the Russo-Japanese War, 1904, was carried on in nominally neutral territory.

Sir W. Scott said in the case of the *Twee Gebroeders* that "no proximate acts of war are in any manner to be allowed to originate on neutral grounds."[5] This would without doubt apply to filibustering expeditions. Many acts are of such nature as to make it impossible to determine whether this principle is violated until the actor is beyond the jurisdiction of the neutral. In such cases the neutral sovereignty is "violated constructively."[6] A second act of this kind might constitute the neutral territory a base of military operations.

Neutral territory as a base of military operations forbidden.

It is difficult to distinguish in some cases between those expeditions which have a warlike character and those which cannot at the time of departure be so classed.

[1] Case of the *General Armstrong*, 2 Moore, "Arbitrations," 1071; the *Anne*, 3 Wheat., 435; 7 Moore, 510, 512, 617, 1089.

[2] Perels, "Das Seerecht," § 39.

[3] N. W. C. 1916.

[4] Appendix, p. lxxxvi

[5] 3 C. Rob., 164.

[6] Hall, p. 644.

In 1828, during the revolution in Portugal, certain troops took refuge in England. In 1829 these men, unarmed but under military command, set out from Plymouth in unarmed vessels, ostensibly for Brazil. Arms for their use had been shipped elsewhere as merchandise. Off the island of Terceira, belonging to Portugal, they were stopped by English vessels within Portuguese waters, and taken back to a point a few hundred miles from the English Channel. The Portuguese then put into a French port. Most authorities are agreed that the expedition was warlike, but that the British ministers should have prevented the departure of the expedition from British waters where they had jurisdiction, instead of coercing it in Portuguese waters.[1]

During the Franco-German War of 1870 a large body of Frenchmen left New York in French vessels bound for France. These vessels also carried large quantities of rifles and cartridges. The Frenchmen were not organized, the arms were proper articles of commerce, and the two were not so related as to render them immediately effective for war. The American Secretary held that this was not a warlike expedition. In discussing this case Hall says, "The uncombined elements of an expedition may leave a neutral state in company with one another, provided they are incapable of proximate combination into an organized whole." [2]

From 1914 certain neutral states took measures that their territory might not become a base of operations through the supplying of war material by their own or by other neutral vessels to belligerent ships of war.[3]

While frequent or repeated use has sometimes been regarded as the test as to a base,[4] the real test is the nature of benefit or

[1] 3 Phillimore, 287–299.

[2] Hall, p. 649. For the case of the *Caroline*, see Appendix, p. cxlix.

[3] 38 U. S. Stat. 1226.

[4] U. S. to Germany, Dec. 24, 1914; Spec. Sup. A. J. I. L., July, 1915, p. 217.

advantage afforded, *e.g.* a single shipment of munitions might more than balance repeated shipments of coal.

133. Regulation of Neutral Relations

The relations between the belligerent and the neutral may in some respects be regulated by the neutral. Such regulations find expression in neutrality laws, in proclamations of neutrality, and in special regulations issued under exceptional circumstances or by joint agreement of several states, as in the Hague Conventions.

(*a*) While it is admitted that the belligerent troops may not use the land of a neutral, yet the neutral is under obligation to offer asylum to those seeking refuge to escape death or captivity. It is the duty of a neutral state, within whose territory commands, or individuals, have taken refuge, to intern them at points as far removed as possible from the theater of war. Interned troops may be guarded in camps, or fortified places. The expenses occasioned by the internment are reimbursed to the neutral state by the belligerent state to whom the interned troops belong.[1]

Obligation to offer asylum to belligerent troops.

(*b*) In general a belligerent vessel has the right of asylum in a neutral port. It may enter to escape the perils of the sea or to purchase provisions, and to make repairs indispensable to the continuance of the voyage.

Right of asylum for vessels.

(*c*) A vessel may be interned in a neutral port when entering after defeat by the enemy or to escape capture; and if it does not leave within the prescribed time is both by law and in accord with practice liable to be interned till the end of the war.

Internment in a neutral port.

The Hague Convention of 1907 concerning Neutral Powers in Naval War provides that:

[1] Appendix, p. lxxiii.

ART. XXIV. If, notwithstanding the notification of the neutral Power, a belligerent ship of war does not leave a port where it is not entitled to remain, the neutral Power is entitled to take such measures as it considers necessary to render the ship incapable of taking the sea during the war, and the commanding officer of the ship must facilitate the execution of such measures.

"When a belligerent ship is detained by a neutral Power, the officers and crew are likewise detained.

"The officers and crew thus detained may be left in the ship or kept either on another vessel or on land, and may be subjected to the measures of restriction which it may appear necessary to impose upon them. A sufficient number of men for looking after the vessel must, however, be always left on board.

"The officers may be left at liberty on giving their word not to quit the neutral territory without permission." [1]

During the Russo-Japanese War of 1904–1905, the Russian transport *Lena* in September, 1904, was interned at San Francisco,[2] and Admiral Enquist's squadron in June, 1905, was interned at Manila. During the same war the principle of naval internment was acted upon by China, France, Great Britain, Germany, and the United States, and recognized by Japan and Russia, and it was acted upon in later wars. The Netherlands in the World War interned both water- and aircraft.

(*d*) Entry may be prohibited, as by the Netherlands in 1914, though usually allowed by the neutral, subject to conditions imposed upon all belligerents alike.[3] These conditions usually allow a vessel to take on necessary provisions and supplies to enable her to reach the nearest home port. A regulation of the Hague Convention of 1907 concerning Neutral Powers in Naval War provides that:

Ordinary entry dependent upon will of the neutral.

[1] Appendix, p. xc.

[2] U. S. For. Rel. 1904, pp. 785–790; N. W. C. 1904, pp. 79–93.

[3] 7 Attorney-Generals' Opinions, 122.

"ART. XIX. Belligerent war-ships may only revictual in neutral ports or roadsteads to bring up their supplies to the peace standard.

"Similarly these vessels may only ship sufficient fuel to enable them to reach the nearest port in their own country. They may, on the other hand, fill up their bunkers built to carry fuel when in neutral countries which have adopted this method of determining the amount of fuel to be supplied." [1]

(*e*) The time of sojourn is usually limited to twenty-four hours, unless a longer time is necessary for taking on supplies, completing necessary repairs, or from stress of weather. Regulations as to the time of departure of hostile vessels from a neutral port were quite fully outlined in President Grant's proclamations of August 22 and of October 8, 1870, during the Franco-Prussian War. In 1914 the United States [2] similarly declared that no vessel of war of either belligerent should leave the

Time of sojourn of vessels.

"waters subject to the jurisdiction of the United States from which a vessel of the other belligerent . . . shall have previously departed, until after the expiration of at least twenty-four hours from the departure of such last-mentioned vessel beyond the jurisdiction of the United States. If any ship of war or privateer of either belligerent shall, after the time this notification takes effect, enter any . . . waters of the United States, such vessel shall be required . . . to put to sea within twenty-four hours after her entrance into such . . . waters, except in case of stress of weather or of her requiring provisions or things necessary for the subsistence of her crew, or for repairs; in any of which cases the authorities . . . shall require her to put to sea as soon as possible after the expiration of such period of twenty-four hours, without permitting her to take in supplies beyond what may be necessary for her immediate use; and no such vessel . . . shall continue within such . . . waters . . . for a longer period than twenty-four hours

Regulation by proclamation.

[1] Appendix, p. lxxxix.

[2] For Neutrality Proclamations, 1914, see N. W. C., 1915.

after her necessary repairs shall have been completed, unless within such twenty-four hours a vessel . . . of an opposing belligerent shall have departed therefrom, in which case the time limited for the departure . . . shall be extended so far as may be necessary to secure an interval of not less than twenty-four hours between such departure and that of any . . . ship of an opposing belligerent which may have previously quit the same . . . waters. No ship of war . . . of a belligerent shall be detained in any . . . waters of the United States more than twenty-four hours, by reason of the successive departures from such . . . waters of more than one vessel of an opposing belligerent. But if there be several vessels of opposing belligerents in the same . . . waters, the order of their departure therefrom shall be so arranged as to afford the opportunity of leaving alternately to the vessels of the opposing belligerents, and to cause the least detention consistent with the objects of this proclamation. No ship of war . . . of a belligerent shall be permitted, while in any . . . waters within the jurisdiction of the United States, to take in any supplies except provisions and such other things as may be requisite for the subsistence of her crew, and except so much coal only as may be sufficient to carry such vessel, if without a sail power, to the nearest port of her own country; or in case the vessel is rigged to go under sail, and may also be propelled by steam power, then with half the quantity of coal which she would be entitled to receive if dependent upon steam alone; and no coal shall be again supplied to any such ship of war . . . in the same or any other . . . waters of the United States, without special permission, until after the expiration of three months from the time when such coal may have been last supplied to her within the waters of the United States, unless such ship of war . . . shall, since last thus supplied, have entered a port of the government to which she belongs." [1]

The tendency at the present time is to make regulations which shall guard most effectively against any possible use of neutral maritime jurisdiction for hostile purposes. In the Spanish-American War of 1898, Brazil provided that in case of

[1] 38 U. S. Stat. 1999.

two belligerent vessels: — "If the vessel leaving, as well as that left behind, be a steamer, or both be sailing vessels, there shall remain the interval of twenty-four hours between the sailing of one and the other. If the one leaving be a sailing vessel and that remaining a steamer, the latter may only leave seventy-two hours thereafter."[1] Brazil adopted the same rule in August, 1914.

Regulations in regard to vessels with prizes.

Many states had adopted the practice of absolutely refusing entrance within their waters to belligerent vessels with prizes, except in case of distress. Some states prescribed that, in such cases, the prizes should be liberated.

The Hague Convention of 1907 respecting Neutral Powers in Naval War has the following:

"ART. XXI. A prize may only be brought into a neutral port on account of unseaworthiness, stress of weather, or want of fuel or provisions.

"It must leave as soon as the circumstances which justified its entry are at an end. If it does not, the neutral Power must order it to leave at once; should it fail to obey, the neutral Power must employ the means at its disposal to release it with its officers and crew and to intern the prize crew.

"ART. XXII. A neutral Power must, similarly, release a prize brought into one of its ports under circumstances other than those referred to in Article XXI.

"ART. XXIII. A neutral Power may allow prizes to enter its ports and roadsteads, whether or not under convoy, when they are brought there to be sequestrated pending the decision of a Prize Court. It may have the prize taken to another of its ports.

"If the prize is convoyed by a war-ship, the prize crew may go on board the convoying ship.

"If the prize is not under convoy, the prize crew are left at liberty."[2]

[1] Proc. and Decrees of the War with Spain, Brazil, XVI, p. 15; see also Int. Law Topics, Naval War College, 1916, p. 12.

[2] Appendix, p. lxxxix.

The United States and some other powers have not accepted Article XXIII permitting sequestration, and many neutral states during the war beginning in 1914 refused this privilege.[1]

(*f*) In recent years the treatment of aircraft in time of war has received much consideration.[2] As aircraft move with greater speed and ease than troops or vessels, the difficulty of enforcing neutral regulations against the aircraft is correspondingly increased. Internment of belligerent aircraft alighting in neutral jurisdiction was the common practice in the World War. The Swiss Neutrality Ordinance of August 4, 1914, is in accord with accepted principles:

Internment of aircraft.

"(*a*) Balloons and aircraft not belonging to the Swiss army cannot rise and navigate in the aerial space situated above our territory unless the persons ascending in the apparatus are furnished with a special authorization, delivered in the territory occupied by the army, by the Commander of the army; in the rest of the country by the Federal military department.

"(*b*) The passage of all balloons and aircraft coming from abroad into our aerial space is forbidden. It will be opposed, if necessary, by all available means and these aircraft will be controlled whenever that appears advantageous.

"(*c*) In case of the landing of foreign balloons or aircraft, their passengers will be conducted to the nearest superior military commander, who will act according to his instructions. The apparatus and the articles which it contain ought, in any case, to be seized by the military authorities or the police. The Federal military department or the commander of the army will decide what ought to be done with the personnel and matériel of a balloon or aircraft coming into our territory through *force majeure* and when there appears to be no reprehensible intention or negligence."

134. No Direct Assistance by the Neutral Allowed

The neutral state may not furnish to a belligerent any assistance in military forces, supplies of war, loans of money, or in any similar manner.

[1] The *Appam*, 37 S. Ct. 337.

[2] N.W.C. 1912, pp. 56 *et seq.*

(*a*) Formerly military assistance was often furnished to one of the belligerents by a state claiming to be neutral on the ground that such action was justified by a treaty obligation entered into before the war could be foreseen. This position was supported by some of the ablest of the authorities of the nineteenth century,[1] but is no longer admitted.

Military assistance forbidden.

(*b*) It is generally held that a neutral state may not furnish to one or both of the belligerents supplies of war. As Hall says, "The general principle that a mercantile act is not a violation of a state of neutrality, is pressed too far when it is made to cover the sale of munitions or vessels of war by a state." [2]

Furnishing of supplies of war not allowable.

A case that aroused discussion was occasioned by the action of the authorities of the United States conformably to a joint resolution of Congress of July 20, 1868, by which the Secretary of War was to cause "to be sold, after offer at public sale on thirty days' notice, . . . the old cannon, arms, and other ordnance stores . . . damaged or otherwise unsuitable for the United States military service, etc." [3] Complaint was made that sales made under this act during the time of the Franco-German War were in violation of neutrality. A committee appointed by the United States Senate to investigate these charges reported that sales "were not made under such circumstances as to violate the obligations of our government as a neutral power; and this, to recapitulate, for three reasons: (1) The Remingtons [the alleged purchasing agents of the French government] were not, in fact, agents of France during the time when sales were made to them; (2) if they were such agents, such fact was neither known nor suspected by our government at the time the sales were made; and (3) if they had been such agents, and that fact had been known to our govern-

[1] Wheat. D., § 425; Dana. *contra*, note 203; 1 Kent Com., pp. 49, 116; Bluntschli, § 759; Woolsey, § 165. [2] Hall, p. 636. [3] 15 U. S. Sts. at Large, 259.

ment, or if, instead of sending agents, Louis Napoleon or Frederick William had personally appeared at the War Department to purchase arms, it would have been lawful for us to sell to either of them, in pursuance of a national policy adopted by us prior to the commencement of hostilities." [1] This last statement does not accord with the best opinion and doubtless would not be maintained at the present time. The first and second claims might justify the sale, though it would be in better accord with strict neutrality for a state to refrain from all sale of supplies of war except to another neutral state, during the period of war between two states, toward which states it professes to maintain a neutral attitude. This, of course, does not affect the rights of commerce in arms on the part of the citizens of a neutral state not residing in belligerent territory.[2]

(*c*) The authorities are practically agreed that loans of money to a belligerent state may not be made or guaranteed by a neutral state. This does not, however, affect the commerce in money which may be carried on by the citizens of a neutral state not residing in belligerent territory.[3]

Loans of money forbidden.

(*d*) A neutral may not permit the enlistment of troops for belligerent service within its jurisdiction. This applies to such action as might assume the proportions of recruiting. The citizens or subjects of a neutral state may enter the service of one of the belligerents in a private manner.[4]

Enlistment of troops not permitted.

135. Positive Obligations of a Neutral State

(*a*) Not only must a neutral state refrain from direct assistance of either belligerent, but it must also put forth positive efforts to prevent acts which would assist a belligerent. If a state has neutrality laws, it is under obligations to enforce

[1] 3 Whart., § 391.
[2] Appendix, p. lxxiv.
[3] Appendix, p. lxxiv.
[4] Appendix, p. lxxiii., Articles 4, 5.

these laws, and is also under obligations to see that the principles generally recognized by international law are observed. Most states make provision for the enforcement of neutrality. In the United States the President is authorized to employ the land and naval forces or militia to execute the law.[1] Jefferson said that, "If the United States have a right to refuse the permission to arm vessels and raise men within their ports and territories, they are bound by the laws of neutrality to exercise that right, and to prohibit such armaments and enlistments."[2] There can be no difference of opinion upon the proposition that a neutral state is bound to restrain within its jurisdiction all overt acts of a character hostile to either belligerent.

Obligation to restrain hostile acts.

(*b*) There are, however, many acts which in themselves have no necessarily warlike character. Whether such acts are in violation of neutrality must be determined by inference as to their purpose. These acts vary so much in character and are of so wide a range that the determination of their true nature often imposes severe burdens upon the neutral attempting to prevent them. The destination of a vessel that is in the course of construction may determine its character so far as the laws of neutrality are concerned. If it is for a friendly state which is at peace with all the world, no objection to its construction and sale can be raised. If a subject of a neutral state builds a vessel for one of the belligerents, such an act has sometimes been regarded as a legitimate business transaction, at other times as an act in violation of neutrality. As a business transaction, the vessel after leaving neutral territory is liable to the risk of seizure as contraband. As an act in violation of neutrality, the neutral state is bound to prevent the departure of the vessel by a reasonable amount of care. The line of demarcation which determines what acts a neutral state is under obligation to

Acts in themselves not necessarily warlike.

[1] 10 U. S. Comp. Sts. § 10,179. [2] 1 Amer. State Papers, 116.

prevent, and what acts it may allow its subjects to perform at their own risk, is not yet clearly drawn. It is certain that a state is bound to use "due diligence" to prevent the violation of its neutrality. In the case of the *Alabama*[1] this phrase was given different meanings by the representatives of the United States and of Great Britain. The arbitrators declared that "due diligence" should be "in exact proportion to the risks to which either of the belligerents may be exposed from a failure to fulfill the obligations of neutrality on their part."[2] This definition is not satisfactory, and the measure of care required still depends upon the circumstances of each individual case, and is therefore a matter of doubt.

The Hague Convention of 1907 concerning Neutral Powers in Naval War provides that:

"ART. VI. The supply, in any manner, directly or indirectly, by a neutral Power to a belligerent Power, of war-ships, ammunition, or war material of any kind whatever, is forbidden. . . .

"ART. VIII. A neutral Government is bound to employ the means at its disposal to prevent the fitting out or arming of any vessel within its jurisdiction which it has reason to believe is intended to cruise, or engage in hostile operations, against a Power with which that Government is at peace. It is also bound to display the same vigilance to prevent the departure from its jurisdiction of any vessel intended to cruise, or engage in hostile operations, which had been adapted entirely or partly within the said jurisdiction for use in war."[3]

Termination of neutral obligations.

(*c*) The conclusion of peace puts an end to neutral obligations. A neutral state may by entering the war terminate its neutrality. In 1917, during the continuance of war, Brazil revoked its earlier proclamation of neutrality.

[1] Appendix, p. cl. [2] 7 Moore, § 1330. [3] Appendix, p. lxxxvii.

OUTLINE OF CHAPTER XXIV

NEUTRAL RELATIONS BETWEEN STATES AND INDIVIDUALS

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(*a*) Destination of the vessel.
(*b*) Ownership of goods.
(*c*) Nationality of the vessel.
  (1) Instances of the variety of practice since 1778.
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(*f*) Procedure in regard to neutral vessel and property in case of seizure.

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(*a*) Differences in practice in regard to convoy.

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(1) Case of the *Bermuda*.

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146 PRIZE AND PRIZE COURTS.

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CHAPTER XXIV

NEUTRAL RELATIONS BETWEEN STATES AND INDIVIDUALS

136. Ordinary Commerce in Time of War

As a general principle, subjects of a neutral state may carry on commerce in the time of war as in the time of peace. At the same time, owing to the fact of war, a belligerent has the right to take measures to reduce his opponent to subjection. The general right of the neutral and the special right of the belligerent come into opposition. The problem becomes one of "taking into consideration the respective rights of the belligerents and of the neutrals; rights of the belligerents to place their opponent beyond the power of resistance, but respecting the liberty and independence of the neutral in doing this; rights of the neutrals to maintain with each of the belligerents free commercial relations, without injury to the opponent of either."[1]

In regard to commerce in the time of war, the matters of destination, ownership of goods, and in the World War, origin, and the nationality of the vessel, have been the facts ordinarily determining the treatment by the belligerent. If there was nothing hostile in the destination of the commercial undertaking, in the nature of the goods, or in the means of transport, the commerce was free from interruption by the belligerent.

Destination.

(*a*) The questions arising in regard to destination will naturally be treated under the subjects of contraband, blockade and continuous voyage.

[1] Fauchille's Bonfils, "Droit Int. Public," § 1494 ff.; Despagnet, "Droit Int. Public," § 682 ff.; Investigation Chalmette Supply Camp, House Doc. 568, 57th Cong. U. S., 1902.

(*b*) The ownership of goods has usually been a fact determining their liability to capture.

Ownership of goods.

The rules of the *Consolato del Mare*, compiled about the fourteenth century, looked to the protection of the neutral vessel and the neutral goods on the one hand, and to the seizure of the enemy vessel and of the enemy goods on the other hand. The goods of an enemy could be seized under a neutral flag, and the goods of a neutral were free even though under an enemy flag. This doctrine considered mainly the ownership of the goods. These rules were held in favor till the sixteenth century, from which time the practice varied greatly, sometimes being regulated by treaty. In the sixteenth century France advanced the doctrine of *hostile contagion*, maintaining the principle of "enemy ships, enemy goods," and "enemy goods, enemy ships." [1]

Nationality of the vessel.

(*c*) The nationality of the vessel has been sometimes regarded as the sole fact determining liability of goods to capture, and at other times as affecting only the vessel itself.

Under the rules of the *Consolato*, the flag determined the liability of the vessel only. Under the French ordinances, the enemy flag contaminated the goods. From 1778, the doctrine that the neutral flag covered enemy goods became more commonly accepted. This was especially emphasized by the armed neutrality of 1780.

Some of the agreements of the United States will show the variety of practice even in recent times. By Art. XXIII of the Treaty of 1778 with France it was provided, "that free ships shall also give a freedom to goods, and that everything shall be deemed to be free and exempt which shall be found on board the ships belonging to the subjects of either of the confederates, although the whole lading or any part thereof should appertain to the enemies of either, contraband goods

[1] Walker, "Science of Int. Law," p. 296.

being always excepted." In the Treaty of 1785 with Prussia occurred the following: "Free vessels making free goods, insomuch that all things shall be adjudged free which shall be on board any vessel belonging to the neutral party, although such things belong to an enemy of the other." In the Treaty of 1795 with Spain was a similar provision, excepting, however, contraband of war. It was asserted in the Treaty of 1799 with Prussia that as the doctrine of "free ships make free goods" had not been respected "during the two last wars," and in the one "which still continues," the contracting parties proposed "after the return of a general peace" to confer with other nations and meantime to observe "the principles and rules of the law of nations generally acknowledged." The Treaty of 1819 with Spain interpreted the clause of the Treaty of 1795 in which it was stipulated that the flag shall cover the property, by saying, "that this shall be so understood with respect to those Powers who recognize this principle; but if either of the two contracting parties shall be at war with a third party, and the other neutral, the flag of the neutral shall cover the property of enemies whose Government acknowledges this principle, and not of others." The Treaty of 1794 with Great Britain expressly provided that property of an enemy on a neutral vessel shall be good prize. In 1887 it was agreed in the treaty with Peru "that the stipulation in this article declaring that the flag shall cover the property shall be understood as applying to those nations only who recognize this principle; but if either of the contracting parties shall be at war with a third, and the other shall remain neutral, the flag of the neutral shall cover the property of enemies whose Governments acknowledge this principle, and not that of others."[1] In spite of these variations, the practice of the United States has been fairly uniform.

Instances of practice since 1778.

According to the unratified Declaration of London of 1909,

[1] See Treaties of U. S. under respective dates.

Article 57, in general the nationality of a vessel was to be "determined by the flag which she is entitled to fly." [1] France, on October 26, 1915, modified paragraph 1 of this Article 57 as follows:

"whenever it is established that a ship flying an enemy flag belongs in fact to the nationals of a neutral or an allied country, or conversely that a ship flying a neutral or allied flag belongs in fact to nationals of an enemy country, or to parties residing in an enemy country, the ship shall accordingly be considered neutral, allied, or enemy."

Declaration of Paris in regard to the flag and goods.

(*d*) Since 1856 the principles enunciated in the Declaration of Paris have generally prevailed. The provisions in regard to the flag and goods are: —

"2. The neutral flag covers enemy's goods, with the exception of contraband of war.

"3. Neutral goods, with the exception of contraband of war, are not liable to capture under the enemy's flag." [2]

This agreement bound only those states which signed it. A few states, including the United States, Spain, Mexico, Venezuela, and China, did not accede to these provisions. The United States declined because the government desired a provision exempting all private property at sea from capture.[3] In the War of 1898, the United States announced that the rules of the Declaration of Paris would be observed, and Spain made a similar announcement except as to the clause in regard to privateering.[4] Spain did not, however, make use of privateers. The goods of a neutral embarked in a belligerent carry-

[1] Appendix, p. ciii.

[2] Appendix, p. xxxi, and particularly the London Declaration, 1909, Chapter VI, Appendix, p. ciii.

[3] For the discussion of "the immunity of private property on the high seas," at the Hague Peace Conference, see III Deux Conf. de la Paix, pp. 750 ff.

[4] Proclamations and Decrees during the War with Spain, pp. 77, 93.

ing vessel are liable to the damages or destruction which may be the consequence of necessary acts of war. Destruction not the result of such necessary acts would be in violation of the rules of the Declaration of London, and the neutral is entitled to reparation.[1]

The rules of the Declaration of Paris had been so generally accepted in practice that there was thought to be little possibility that they would be disregarded by the civilized states of the world. However, in the World War there were many departures from accepted principles. When neutrals protested they were informed that diplomatic representations might later be made, but the practices continued.

137. Contraband

Contraband is the term applied to those articles which from their usefulness in war a neutral cannot transport without risk of seizure. While a state is under obligation to prevent the fitting out of hostile expeditions and to refrain from furnishing belligerent ships warlike material, a state is not bound to prohibit the traffic by its citizens or subjects in contraband of war. Such articles as are contraband may be seized on the high seas, and by the Declaration of Paris [2] are not protected by the neutral flag.

(*a*) Of the articles of commerce themselves, Grotius makes three general classes: —

"1. Those which have their sole use in war, such as arms."

"2. Those which have no use in war, as articles of luxury."

"3. Those which have use both in war and out of war, as money, provisions, ships, and those things appertaining to ships." [3]

Grotius regards articles of the first class as hostile, of the second as not a matter of complaint, and of the third as of

[1] Appendix, p. ci. [2] Appendix, p. xxxi.

[3] "De Jure Belli," Bk. III, Ch. i, 5; The "Peterhoff," 5 Wall., 28, 58.

ambiguous use (*usus ancipitis*), of which the treatment is to be determined by their relation to the war.

History of the principle of contraband.

While the general principle may be clear, the application of the principle is not simple. Those articles whose sole use is in war are, without question, contraband. Articles exclusively for peaceful use are not contraband. Between these two classes are many articles in regard to which both practice and theory have varied most widely. The theorists have usually endeavored to give the neutral the largest possible liberty in commerce, on the ground that those who were not parties to the war should not bear its burdens. This has been the opinion most approved by the jurists of Continental Europe. Great Britain and the United States have been inclined to extend the range of articles which might on occasion be classed as contraband.

The attitude of the United States has usually been to favor enumeration of articles which will be declared contraband.[1]

Attitude of the United States.

In the Spanish War of 1898 the United States, under the head of absolute contraband, issued a list of articles of particular use in war, such as war material, instruments of war, machinery for their manufacture. Horses were also included in this list. Conditional contraband covered coal, railway and telegraph material, and money, when destined for the enemy forces, and "provisions when destined for an enemy's ship or ships or for a place that is besieged."

The United States has also by certain treaty agreements determined lists of contraband. Many of these lists are no longer suited to military requirements.

The range of articles classed as contraband will naturally vary from time to time as changes in the method of carrying on war occur Horses have usually been regarded as con-

[1] At the outbreak of the World War the United States proposed the classification of the Declaration of London.

traband by France, England, and the United States, except in their dealings with Russia, which state has always opposed this inclusion. The increasing importance of coal during the latter half of the nineteenth century has led to the policy of determination of its character by its destination. Provisions are in practically the same position as coal.[1] In the war with Spain in 1898, the United States included as absolute contraband, horses, and as conditionally contraband, coal, money, and provisions, which Spain did not mention. Spain mentioned by name sulphur, which the United States did not specify, though it might be included in some of the general classes. "As the supply of sulphur is chiefly obtained from Sicily, the Spanish government would have had a rare opportunity to seize and confiscate it as it passed through the Straits of Gibraltar. But upon the request of the Italian government it . . . refrained from treating sulphur as contraband." [2]

Range of articles classed as contraband.

The states of continental Europe had generally maintained in time of war the division of articles into contraband and non-contraband. The United States, Great Britain and Japan usually added the category of conditional contraband. When Russia, in 1904, included in the category of absolute contraband such articles as fuel and cotton, several states protested on the ground that the destination for military use was essential before these articles could be regarded as contraband. Russia later gave the interpretation that, "In cases where they were addressed to private individuals, these articles shall not be considered contraband of war." [3]

The contraband list was extended somewhat by British proclamation, August 4, 1916. Great Britain's allies accepted this list and later additions. Naturally the opposing

[1] The *Commercen*, 1 Wheat., 382.
[2] See article of John Bassett Moore in *Review of Reviews*, May, 1899.
[3] U. S. For. Rel. 1904, p. 3; British Parl. Papers, Russia No. 1 (1905), p. 24

belligerents correspondingly enlarged their lists. Distinction between absolute and conditional contraband practically disappeared. The British list in April, 1916, named more than one hundred and fifty classes of contraband articles. Against such extensions neutral states protested and reserved rights to indemnity.

There remains great diversity of opinion upon the subject of contraband. The Hague Conference of 1907 formulated a tentative list of absolute contraband, but did not reach final conclusions, and the subject of contraband was made the first in the list of topics submitted to the International Naval Conference at London in 1908–1909.

(*b*) The International Naval Conference participated in by Germany, United States, Austria-Hungary, Spain, France, Great Britain, Italy, Japan, Netherlands, and Russia, approved in the Declaration of London of February 26, 1909, the tentative list agreed upon at the Hague Conference in 1907.

Declaration of London, 1909.

This includes articles which may, without notice, be treated as contraband of war, under the name of absolute contraband when destined for territory within the enemy jurisdiction. With the exception of "saddle, draught, and pack animals suitable for use in war," this is a list of articles primarily and distinctively of military character.

In Article 24 of the Declaration articles susceptible of use in war as well as for purposes of peace, which may, without notice, be treated as contraband of war, under the name of conditional contraband, were enumerated. This list includes foodstuffs, fuel, clothing, etc.

A departure from earlier regulations was made in providing that (Article 27) "Articles and materials which are not susceptible of use in war are not to be declared contraband of war." A specific free list was also established, including many raw materials such as cotton, wool, including agricultural and

mining machinery, fancy goods, etc. Likewise articles serving exclusively to aid the sick and wounded may not be treated as contraband of war. Articles intended for the use of the vessel in which they are found, and those intended for the use of her crew and passengers during the voyage, may not be treated as contraband.

It was recognized that in the course of time, through new inventions, etc., other articles might properly be added to the lists of absolute or conditional contraband, and provision to this end was made by means of a notified declaration.[1]

(*c*) During the wars since the Declaration of London, 1909, the distinction between conditional and absolute contraband has been less observed than formerly. In the Turco-Italian War, 1911–1912, the list of absolute contraband included articles formerly in the list of conditional contraband. The same was true in the Balkan Wars, 1912–1913. During the World War the list of absolute contraband became almost all inclusive. It is probable that the category of conditional contraband will disappear and that unless there is an international agreement the list of contraband articles will be extended as belligerents are strong and neutrals weak and will be restricted when conditions are reversed.

Absolute and conditional contraband.

(*e*) A result somewhat similar to the limitation on trade in contraband was obtained through belligerent pressure upon neutrals during the World War which led neutral states to prohibit exportation of many articles to European countries, *e.g.* the Danish list of September 20, 1915, enumerated more than two hundred articles from air tubes to zinc.[2]

Prohibited exports.

138. Penalty for Carrying Contraband

(*a*) No penalty attached to the simple act of transportation of contraband. It was the hostile destination of the goods

[1] Appendix, Ch. II, p. xcvi.

[2] N. W. C. 1915, 33 *et seq.*

that rendered them liable to penalty and the vessel liable to delay or other consequences according to circumstances.

Hostile destination renders goods liable to penalty.

Hostile destination for absolute contraband was "the territory belonging to or occupied by the enemy, or to the armed forces of the enemy." Till 1914, it was generally accepted that to render it liable to condemnation, conditional contraband must be shown "to be destined for the use of the armed forces or of a government department of the enemy State, unless in this latter case the circumstances show that the articles cannot in fact be used for the purposes of the war in progress." [1]

(*b*) The unratified Declaration of London, 1909, provided:

"ART. 37. A vessel carrying articles liable to capture as absolute or conditional contraband may be captured on the high seas or in the territorial waters of the belligerents throughout the whole course of her voyage, even if she has the intention to touch at a port of call before reaching the hostile destination.

"ART. 38. A capture is not to be made on the ground of a carriage of contraband previously accomplished and at the time completed.

"ART. 39. Contraband is liable to condemnation."

A vessel which would otherwise be free when carrying contraband may become liable to condemnation on account of fraud. Such fraud may consist in bearing false papers or claiming a false destination.

In certain instances, vessels have been held liable to condemnation because carrying articles which by treaty between the state of the captor and the state of the carrier are specially forbidden.

The neutral carrier loses freight on the contraband goods and suffers such inconvenience and delay as the bringing in

[1] Appendix, Articles 30–37, pp. xcviii–xcix.

of the contraband and its adjudication in a proper court may entail, and may be condemned to pay costs.[1]

(*c*) Provision was, however, made in the Declaration of London, 1909, by which

When contraband is only part of the cargo.

"A vessel stopped because carrying contraband, and not liable to condemnation on account of the proportion of contraband, may, according to circumstances, be allowed to continue her voyage if the master is ready to deliver the contraband to the belligerent ship. . .

"The captor is at liberty to destroy the contraband which is thus delivered to him." [2]

The United States has from time to time made treaties involving this principle. An early treaty between the United States and Sweden, 1783, says of the seizure of neutral vessels with contraband:

"And in case the contraband merchandize be only a part of the cargo and the master of the vessel agrees, consents and offers to deliver them to the vessel that has discovered them, in that case the latter, after receiving the merchandizes which are good prize, shall immediately let the vessel go and shall not by any means hinder her from pursuing her voyage to the place of her destination." [3]

If ratified, Article 40 of the Declaration of London would have allowed condemnation of a vessel if contraband formed "either by value, by weight, by volume, or by freight, more than half the cargo."

(*d*) Under special circumstances goods have been treated as liable to preëmption instead of absolute seizure. Of this Hall says, "In strictness every article which is either necessarily contraband, or which has become so from the special circumstances of war, is liable to confiscation; but it is usual for those nations who vary their list

Preëmption.

[1] Appendix, Article 41, p. xcix. [2] Appendix, Article 44, p. c.
[3] Article 13, Treaty 1783.

of contraband to subject the latter class to preëmption only, which by the English practice means purchase of the merchandise at its mercantile value, together with a reasonable profit, usually calculated at ten per cent on the amount." [1] This practice was not viewed with favor upon the Continent because indicating a departure from the generally accepted practice.

139. Unneutral Service

Unneutral service differs from the carriage of contraband, particularly in being hostile in its nature and involving a participation in the contest by the neutral rendering the service. Such service involves assistance in the performance of warlike acts. While the destination is a question of vital importance in the case of contraband, the intent of the act is a matter of highest importance in cases of unneutral service.[2]

The acts generally regarded as in the category of unneutral service are such as: —

1. Participation in the hostilities.
2. The transmission of intelligence in the interest of the enemy.
3. The carriage of certain belligerent persons.
4. Aid by auxiliary coal, repair, supply, transport ships, or other ships in control of the belligerent.

Participation in hostilities.

(*a*) Participation in the hostilities naturally identifies a neutral with the belligerent and makes him and his property liable to treatment as belligerent.

Transmission of intelligence.

(*b*) Of the transmission of intelligence, in the case of the *Atlanta*, Lord Stowell said: —

"How is the intercourse between the mother country and the colonies kept up in the time of peace? By ships of war or by packets in the service of the state. If a war intervenes, and the other belligerent prevails to interrupt that communication, any person stepping in to lend

[1] Hall, p. 713. [2] Hershey, 506.

himself to effect the same purpose, under the privilege of an ostensible neutral character, does in fact place himself in the service of the enemy state." [1]

Regular diplomatic and consular correspondence is not regarded as hostile unless there is some special reason for such belief.

Such acts by a neutral ship as the repetition of signals in interest of a belligerent might render the ship liable to penalty. Submarine telegraphic cables between a belligerent and a neutral state may become liable to censorship or to interruption beyond neutral jurisdiction if used for hostile purposes. The introduction of radio telegraphy has enlarged the range of unneutral communications.

(*c*) The limitation in regard to the carriage of certain belligerent persons applies to those who travel in such manner as to make it evident that they travel in the military or naval service of the belligerent state. If the carriage of the person or persons is paid by the state, or is under state contract, it is regarded as sufficient evidence of unneutral service.[2] The neutral carrier engaged in ordinary service is not obliged to investigate the character of persons who take passage in the usual way. The case of the *Trent* had no particular bearing upon this subject, as it merely emphasized a principle at that time settled "that a public ship, though of a nation at war, cannot take persons out of a neutral vessel at sea, whatever may be the claim of her government on those persons." [3]

Carriage of certain belligerent persons.

The principle thus stated by Dana was modified as regards those actually embodied in the armed forces of the enemy by the unratified Declaration of London, 1909, to the following effect:

[1] 6 C. Rob., 440, 445. [2] The *Orozembo*, 6 C. Rob. 430.
[3] Wheat. D., p. 648.

"ART. 47. Any individual embodied in the armed force of the enemy and who is found on board a neutral merchant vessel, may be made a prisoner of war, even though there be no ground for the capture of the vessel."

On February 18, 1916, the British cruiser *Laurentic* removed from the American steamship *China* thirty-eight enemy subjects, and the British Government contended that it was "of the greatest importance for a belligerent power to intercept on the high seas," "those agents whom the enemy sends to injure his opponent abroad or whose services he enjoys without having himself commissioned them." The Government of the United States requested the release of the persons taken from the *China* and on May 20, 1916, they were released.[1]

Auxiliary coal, repair, supply, or transport ships.

(*d*) Auxiliary coal, repair, supply, or transport ships, or other vessels under orders or control of an enemy government or in its exclusive employ have an undoubted hostile character.[2]

The general penalty for the performance of unneutral service is the forfeiture of the vessel so engaged.

Detailed penalties were prescribed in the unratified Declaration of London, 1909.[3]

140. Visit, Search, Seizure, and Destruction

The right of visiting and searching merchant ships.

(*a*) "The right of visiting and searching merchant ships upon the seas — whatever be the ships, whatever be the cargoes, whatever be the destinations — is an incontestable right of the lawfully commissioned cruisers of a belligerent nation," [4] is the statement of the general principle laid down in the case of the *Maria*. Judge Story says that the right is "allowed

[1] Spec. Sup. A.J.I.L. Oct. 1916, p. 427; see also Piepenbrink case, *Ibid.*, July 1915, p. 353.

[2] The *Kow-shing*, Takahashi, 24-51.

[3] Articles 45, 46, Appendix, p. c.

[4] 1 C. Rob., 340, 359.

by the general consent of nations in the time of war and limited to those occasions." [1] There is, however, a qualified right of search in the time of peace in case of vessels suspected of such offenses as piracy, slave trade, pelagic sealing,[2] a right to be exercised most carefully under liability to damages. Approach to ascertain the nationality of a vessel is also allowed.

(*b*) In the time of war the right is exercised in order to secure from the neutral the observance of the laws of neutrality, or specifically, according to the regulations of the United States is exercised upon private vessels to determine (1) their nationality, (2) the port of destination and departure, (3) the character of their cargo, (4) the nature of their employment, or (5) other facts which bear on their relation to the war.

The object of the right of search.

(*c*) The vessel is usually brought to by firing a gun with a blank charge, or if this is not sufficient, a shot across the bows or even by the use of necessary force. The cruiser should then send a small boat with an officer to conduct the search. Arms may be carried in the boat but not upon the persons of the men. The officer should not be accompanied on board the vessel by more than two men. He should examine the papers of the vessel. If these papers show contraband, any offense in respect to blockade, or that she is in the enemy service, the vessel should be seized; otherwise she should be set free, unless suspicious circumstances justify a further search. An entry in the log book of the circumstances of the visit should ordinarily be made by the boarding officer.[3]

The method of conducting the search.

Protesting against British practice, in a note of October 21, 1915, the United States said that "search at sea was the procedure expected to be followed," modern conditions not justify-

[1] The *Marianna Flora*, 11 Wheat., 1.
[2] Fur Seal Convention, 1911, 3 Treaties p. 60.
[3] Instructions, June 30, 1917, § 42.

ing bringing vessels into port for search, or seizures at sea on "conjectural suspicion." About six months later Great Britain in a note of April 24, 1916, replied to the American note. The British maintained that "the question of locality of search, is however, one of secondary importance" and argued for many new practices.[1]

One of the new practices was the "routing" of neutral vessels to belligerent ports for examination in port.

Ship's papers.

(*d*) The papers expected to be on board as evidence of the character of the vessel are: —

1. The register.
2. The crew and passenger list.
3. The log book.
4. A bill of health.
5. The manifest of cargo.
6. A charter party, if the vessel is chartered.
7. Invoices and bills of lading.[2]

(*e*) It is generally held that a vessel may be seized in case of: —

Grounds of seizure.

1. Resistance to visit and search.
2. Clear evidence of attempt to avoid visit and search by escape.
3. Clear evidence of illegal acts on the part of the neutral vessel.
4. Absence of or defect in the necessary papers.
   (a) Fraudulent papers.
   (b) Destruction, defacement, or concealment of papers.
   (c) Simple failure to produce regular papers.

(*f*) In case of seizure it is held that the neutral vessel and property vest in the neutral till properly condemned by a duly authorized court. The captor is therefore under obligation: —

Seizure.

[1] For notes see Spec. Sup. A. J. I. L., Oct., 1916., pp. 73, 120.

[2] Most of the forms are given in Instructions, June 30, 1917, pp. 41–77.

1. To conduct the seizure with due regard to the person and property of the neutral.

2. To exercise reasonable diligence to bring the capture quickly to a port for its adjudication.

3. To guard the capture from injury so far as within his power.

Failure to fulfill these obligations renders the belligerent liable to damages.[1]

In the Chino-Japanese War of 1894, the Japanese war vessels visited eighty-one neutral vessels, but only one was brought to the prize court.[2]

In the Russo-Japanese War of 1904–1905 sixty-four vessels were brought before the Japanese prize courts, of which fifty were condemned.[3]

(*g*) The Hague Convention of 1907 with regard to the Right of Capture in Naval War, provided for the inviolability of all postal correspondence of whatever character on the high seas except when "destined for or proceeding from a blockaded port." The mail-ship is not exempt but should not be searched except when absolutely necessary.

Exemptions from capture.

During the World War this exemption was properly held to apply to "correspondence" only and not to goods whether sent by parcel post or sealed in other wrappers.[4] It was also maintained that belligerents might censor "correspondence." This met with opposition from neutrals, but the practice continued.[5]

Innocently employed small coast fishing and coast trading vessels are exempt from capture, as are vessels engaged in religious, scientific, or philanthropic missions.[6]

[1] Hall, p. 738.
[2] Takahashi, Chino-Japanese, 16–23.
[3] Takahashi, Russo-Japanese, 537.
[4] Parliamentary Papers, Misc. No. 9 (1916), p. 6.
[5] See Spec. Sup. A. J. I. L., Oct. 1916, pp. 404 *et seq.*
[6] Appendix, p. lxxxiv.

(*h*) As a general principle a neutral vessel which has been seized should be conducted to a prize court and according to Article 48 of the Declaration of London, 1909, this was to be the recognized rule.

Destruction of neutral prizes.

It was evident, however, that in practice neutral vessels were sometimes destroyed and that the regulations of certain states made provision for destruction under exceptional circumstances. There was not agreement upon what should be admitted as exceptional circumstances. To meet this difficulty the London Declaration proposed : —

"ART. 49. As an exception, a neutral vessel which has been captured by a belligerent ship, and which would be liable to condemnation, may be destroyed if the observance of Article 48 would involve danger to the ship of war or to the success of the operations in which she is at the time engaged."

All persons and papers must be placed in safety. This requirement was reaffirmed at the Conference on Limitation of Armament, 1922. The captor must establish that his act was due to " an exceptional necessity," otherwise compensation must be paid " whether or not the capture was valid." Compensation must also be paid if the capture is subsequently held invalid and also for innocent goods destroyed.[1]

The United States protested as " an indefensible violation of neutral rights " the sinking of vessels by Germany within the war zone declared February 4, 1915. On January 31, 1917, Germany indicating a large area around Great Britain, France, Italy and in the Eastern Mediterranean announced, " All ships met within that zone will be sunk." The United States immediately broke off diplomatic relations, February 3.

On March 12, 1917, the United States announced that it would place upon American merchant vessels " an armed guard for the protection of the vessels and the lives of the persons on board."

[1] Appendix, p. ci.

Congress stating that war had "thus been thrust upon the United States" declared war against Germany, April 6, 1917, and the President signed the resolution at 1 : 18 P.M.

Germany had in the submarine warfare disregarded all the rules in regard to destruction of merchant vessels, thus bringing discredit upon the submarine as a legitimate instrument of war, preparing the way for the prohibitions adopted at Washington Conference on Limitation of Armament, February 6, 1922.[1] These rules may be open to evasion if armed merchant vessels are not also prohibited.

141. Convoy

(*a*) A neutral merchant vessel is sometimes placed under the protection of a ship of war of its own state, and is then said to be under convoy.

It had been claimed by many authorities, particularly those of Continental Europe, that such a merchant vessel was exempt from visitation and search upon the declaration of the commander of the neutral ship of war that the merchantman was violating no neutral obligation. England had uniformly denied the validity of this claim up to 1908, when at the International Naval Conference she waived her former contention and Articles 61 and 62 of the Declaration of London were adopted.[2]

Differences in practice.

Practice has been very divergent in most states. From the middle of the seventeenth century the right of convoy has been asserted. From the end of the eighteenth century the claim has gained in importance.[3] The United States has made many treaties directly recognizing the practice.

(*b*) In the World War the Italian Naval Prize Regulations of July 15, 1915, embodied the articles of the Declaration of

[1] Appendix, p. cvii. [2] Appendix, p. ciii.

[3] Gessner, "Le Droit des neutres sur mer," Ch. IV; Perels, "Manuel Droit Maritime," § 56.

London: "10. Neutral vessels convoyed by a ship of war shall be exempt from visit provided that the commander of the convoy declares in writing the character and cargo of the convoyed vessel in such manner as will enable all information to be available which could be obtained by exercising the right of visit. If the naval officers in command have reason to think that the good faith of the commanding officer of the escort has been imposed upon, they will communicate to him their suspicion so that he may on his own account make the necessary verifications and issue a written report."[1] In general the convoying of merchant vessels was not resorted to during the World War.

Practice in the World War.

142. Blockades and Other Restraints

Blockade is the obstruction of communication with a place in the possession of one of the belligerents by the armed forces of the other belligerent. The form which blockade takes in most cases is that of obstruction of communication by water.

(*a*) In 1584 Holland declared the ports of Flanders blockaded. Holland did not, however, maintain this declaration by ships of war; indeed, in the early days there were no such ships as would make the maintenance of a blockade possible. Such paper blockades were common in the following centuries, and all the ports of a state were frequently proclaimed blockaded, even though there might be no force in the neighborhood to insure that the blockade would not be violated. Treaties of the eighteenth century show an inclination in the states to lessen the evils of blockade by proclamation. The growth of neutral trade led to the adoption of rules for its greater protection. The armed neutrality of 1780 asserted in its proclaimed principles that a valid blockade should

History.

[1] N. W. C. 1915, p. 116.

involve such a disposition of the vessels of the belligerent proclaiming the blockade as to make the attempt to enter manifestly dangerous.[1] The armed neutrality of 1800 asserted that a notice from the commander of the blockading vessels must be given to the approaching neutral vessel. During the Napoleonic wars there was a return to the practice of issuing proclamations with the view to limiting neutral commerce. The English Orders in Council of 1806 and 1807, and the Berlin Decree of 1806, and the Milan Decree of 1807, by which Napoleon attempted to meet the English Orders, were the expression of the extremest belligerent claims in regard to the obstruction of neutral commerce. The treaties of 1815 said nothing in regard to blockade. The practice and theory varied till, by the Declaration of Paris in 1856, a fixed basis was announced in the provision that "Blockades, in order to be binding, must be effective."[2]

British Orders in Council and decrees of other states, 1914–1917, gave rise to differences between neutrals and belligerents similar to those of the early nineteenth century.[3]

(*b*) A blockade presupposes: —

Conditions of existence.

1. A state of war.
2. Declaration by the proper authority.
3. Notification of neutral states and their subjects.
4. Effective maintenance.

(*c*) The so-called pacific blockade because differing in purpose and method is not properly a war measure. In a strict sense there is no blockade without war, and blockade may continue even to the conclusion of peace though a truce or armistice intervene.

Blockade a war measure.

(*d*) Blockade can be declared only by the proper authority.

[1] Walker, "Science of Int. Law," p. 304. [2] Appendix, p. xxxi.

[3] See Spec. Sup. A. J. I. L. July, 1915, pp. 4 *et seq.*, 101 *et seq.*; *Ibid.*, Oct., 1916, pp. 4 *et seq.*, 79 *et seq.*; 2 Hyde, 658.

As war is a state act, only the person or authority designated by the constitution or law of the state can declare a blockade. Such a declaration must, in general, come from the chief of the state. In certain cases a blockade declared by an officer in command of forces remote from the central government is held to be valid from the time of its proclamation, if the act of the commander receives subsequent ratification from the central authority.

Declaration.

The unratified Declaration of London, 1909, Article 9, proposed that a blockade should specify: —

"(1) The date when the blockade begins.

"(2) The geographical limits of the coast blockaded.

"(3) The delay to be allowed to neutral vessels for departure." [1]

The British Government, February 23, 1915, issued the following: —

"His Majesty's Government have decided to declare a blockade of the coast of the Cameroons as from midnight April 23rd–24th. The blockade will extend from the entrance of Akwayafe River to Bimbia Creek, and from the Benge mouth of the Sanaga River to Campo.

"Forty-eight hours' grace from the time of the commencement of the blockade will be given for the departure of neutral vessels from the blockaded area."

(*e*) Neutrals must be notified of the existence of a blockade. This notification may be: —

Notification.

1. By official proclamation announcing the place to be blockaded, and the time when the proclamation becomes effective.

2. By notification to vessels when they come near the place blockaded.

3. The use of both the above methods.

[1] Appendix, p. xciii.

The theory of the American and English authorities has been to assume a knowledge of the blockade on the part of subjects if the political authority of their state had been informed of the existence of the blockade before the neutral vessel left port.[1]

The French rule has been to give in every instance an approaching neutral vessel warning of the existence of a blockade, and to consider the notification to the neutral state authorities as merely a diplomatic courtesy.

Ordinarily local notification is made to port and consular authorities of the place blockaded.

In recent years the time allowed a vessel to discharge, reload, and to leave port has been specified.

In case of special notification by the officer in command of a blockading ship to a neutral vessel ignorant of the blockade, the fact with particulars should be entered in the log of the neutral vessel over the officer's signature.[2]

(*f*) The principle that a blockade must be effective applies both to the place and to the manner of enforcement.

A blockade must be effective.

1. Blockade must apply to a place which may be blockaded, *i.e.* to seaports, rivers, gulfs, bays, roadsteads, etc. A river which forms the boundary between one of the belligerent states and a neutral state may not be blockaded. Rivers flowing for a part of their course through belligerent territory but discharging through neutral territory may not be blockaded. Certain waters are not liable to blockade because exempt by agreement; as in the case of the Kongo River by the Act of 1885.

2. "Blockades, in order to be binding, must be effective, that is to say, maintained by a force sufficient really to prevent

[1] President McKinley's Proclamation of Blockade, during the war with Spain, is given in Proclamations and Decrees, p. 75, and President Lincoln's, during the war with the South, in 12 U. S. Sts. at Large, Appendix ii, iii.

[2] Appendix, p. xciv.

access to the coast of the enemy." [1] This is interpreted in the United States as "maintained by a force sufficient to render ingress to or egress from the port dangerous." [2] The subject of the degree of effectiveness which is necessary has been much discussed, and can only be determined by the circumstances in a given case.[3] The English interpretation in the main agrees with that of the United States. The Continental states are inclined to give a more literal interpretation to the rule.

The Declaration of London, 1909, recognized that geographical and many other conditions affect the maintenance of a blockade and decided: —

"Art. 3. The question whether a blockade is effective is a question of fact." [4]

(*g*) A blockade comes to an end: —

1. By the cessation of any attempt to render it effective.

Cessation.

2. By the repulse by force of the vessels attempting to maintain the blockade.

3. For a given neutral vessel when there is no evidence of a blockade, after due care to respect its existence. This may happen when the blockading force is temporarily withdrawn on account of stress of weather.

There is a general agreement that in the other cases after cessation blockade must be formally instituted again as it was in the beginning.

(*h*) During all wars certain areas have been especially dangerous because in the neighborhood of hostile operations. Into areas in which hostilities were actually going on neutrals came at their own risk. Neutrals have in recent years been excluded from areas which were regarded by the belligerent as of particular military importance. These

Defensive areas.

[1] Declaration of Paris, Appendix, p. xxxi.

[2] Instructions, Navy of U. S., June 30, 1917, § 27; cited *Olinde Rodriguez*, 174 U. S. 510.

[3] Calvo, § 2841.

[4] Appendix, p. xciii.

were termed by Japan in 1904 "defensive sea areas" and have at other times been named "strategical areas." The United States established such areas by executive orders from April 5, 1917, and other states had already issued similar orders.

(*i*) The establishment of mined areas has become usual in time of war. Almost from the commencement of the World War, mine fields were proclaimed and counter mining operations were common.[1] On August 11, 1914, Great Britain announced, "The waters of the North Sea must therefore be regarded as perilous in the last degree to merchant shipping of all nations," declaring that, "The Germans are scattering contact mines indiscriminately about the North Sea."

Mined areas.

(*j*) Contending that Germany had disregarded the laws of war, Great Britain gave notice on November 3, 1914, that "the whole of the North Sea must be considered a military area." Soon retaliatory declarations among the belligerents were common, and at length, on January 31, 1917, Germany declared a war zone "around Great Britain, France, Italy, and in the Eastern Mediterranean" and that "all ships met within that zone will be sunk." Breaking of diplomatic relations and war with the United States followed this "war zone" note.

War zones.

(*k*) These extreme retaliatory measures are not sanctioned by international law and even when retaliatory measures are justified against an enemy, this justification gives no sanction to acts directly aimed at the neutral in order to injure indirectly the belligerent. The British Court decided, however, in 1919 that "Disregard of a valid measure of retaliation is as against neutrals, just as justiciable in a court of prize as is breach of blockade or the carriage of contraband of war."[2]

Retaliatory measures.

[1] N. W. C. 1917, pp. 106 *et seq.*

[2] *The Leonora*, 35 L. T. R. (1919), 719.

143. Violation of Blockade

"A breach of blockade is not an offense against the laws of the country of the neutral owner or master. The only penalty for engaging in such trade is the liability to capture and condemnation by the belligerent." [1] The American and English practice was to regard as the breach of blockade the act of passing, unless by special privilege, into or out of a blockaded place, or a manifestation of an intent to thus pass. The French courts imposed a penalty only upon those who actually attempted to run the blockade. The American practice made the vessel liable to penalty from the time of its departure from neutral jurisdiction with intent to enter the blockaded port until its return, unless the blockade was raised meantime.

The Declaration of London, 1909, attempting to reconcile divergent practices, in an equitable manner, proposed that: —

"ART. 17. The seizure of neutral vessels for violation of blockade may be made only within the radius of action of the ships of war assigned to maintain an effective blockade."

"ART. 20. A vessel which in violation of blockade has left a blockaded port or has attempted to enter the port is liable to capture so long as she is pursued by a ship of the blockading force. If the pursuit is abandoned or if the blockade is raised, her capture can no longer be effected." [2]

Under proper regulations, certain vessels are usually allowed to pass a blockade [3] without penalty: —

1. Neutral vessels in actual distress.
2. Neutral vessels of war strictly as a privilege.
3. Neutral vessels in the port at the time of the establishment of the blockade, provided they depart within a reasonable time.

In the War of 1898, the United States allowed thirty days

[1] Snow's "International Law," n. 155. [2] Appendix, pp. xciv, xcv.
[3] Appendix, p. xciii.

after the establishment of the blockade to neutral vessels to load and to depart. Practice has varied in later wars.

The usual penalty for the violation of blockade is forfeiture of vessel and cargo, although when vessel and cargo belong to different owners, and the owner of the cargo is an innocent shipper, it has been held that the cargo may be released.[1] The same action may be taken as to innocent cargo if a vessel deviates from her original destination to a blockaded port. The crews of neutral vessels violating a blockade are not prisoners of war, but may be held as witnesses before a prize court.

144. Continuous Voyages

History.

a) The rule of war of 1756 declared that during war neutrals were not permitted to engage with the colonies of a belligerent in a trade which was not permitted to foreigners in time of peace. Ordinarily in the time of peace, trade between the mother country and the colony was restricted to domestic ships. This rule was adopted in order that a neutral might not, by undertaking trade denied him in time of peace, relieve one of the belligerents of a part of the burdens of war which the interruption of domestic commerce by the other belligerent had imposed. Trade with neutral ports was allowed in time of peace. Therefore, to avoid technical violation of the rule, neutral vessels sailing from a port within belligerent jurisdiction, touched at a port within neutral jurisdiction, and in some cases landed and reshipped their cargoes. Lord Stowell decided that it was a settled principle " that the mere touching at any port without importing the cargo into the common stock of the country will not alter the nature of the voyage, which continues the same in all respects, and must be considered as a voyage to the country to which the vessel is actually going for the purpose of delivering her cargo at the ultimate

[1] Appendix, p. xcv.

port." [1] In the case of the *William* in 1806, Sir William Grant declared that "the truth may not always be discernible, but when it is discovered, it is according to the truth and not according to the fiction that we are to give to the transaction its character and denomination. If the voyage from the place of lading be not really ended, it matters not by what acts the party may have evinced his desire of making it appear to have ended. That those acts have been attended with trouble and expense cannot alter their quality or their effect." [2] The English authorities held that the visit to a neutral port did not constitute the trip two voyages, but that the voyage was continuous and the property liable to confiscation, though Hall says the "cargo was confiscated only when captured on its voyage from the port of colorable importation to the enemy country." [3] British cruisers, however, seized three German vessels, the *Herzog*, the *Bundesrath*, and the *General*, during the South African War of 1899–1900, while on a voyage to the Portuguese port of Lorenço Marquez, which was the natural port of entry for Pretoria, the capital of the South African Republic. Germany protested. The vessels were released and the English authorities promised that in the future they would refrain from searching vessels until the vessels had passed beyond Aden, or any other place at the same distance from Delagoa Bay.

Case of the Bermuda.

The American doctrine of continuous voyages was a considerable extension of the English doctrine and during Civil War met with severe criticism. In the case of the *Bermuda*, captured during the Civil War of 1861–1865, it was held that: —

"Destination alone justifies seizure and condemnation of ship and cargo in voyage to ports under blockade; and such destination justifies equally seizure of contraband in voyage to ports not under blockade; but in the last case the ship, and cargo, not

[1] The *Maria*, 5 C. Rob., 365, 368. [2] 5 C. Rob., 385, 396. [3] Hall, p. 719.

contraband, are free from seizure, except in cases of fraud or bad faith." [1]

Case of the Stephen Hart.

In the case of the *Stephen Hart*, a British schooner, bound from London to Cuba with a cargo of war supplies, captured in 1862 off the coast of Florida, Judge Betts condemned both vessel and cargo. He maintained that: —

"The commerce is in the destination and intended use of the property laden on board of the vessel, and not in the incidental, ancillary, and temporary voyage of the vessel, which may be but one of many carriers through which the property is to reach its true and original destination. . . . If the guilty intention, that the contraband goods should reach a port of the enemy, existed when such goods left their English port, that guilty intention cannot be obliterated by the innocent intention of stopping at a neutral port on the way. . . . This court holds that, in all such cases, the transportation or voyage of the contraband goods is to be considered as a unit, from the port of lading to the port of delivery in the enemy's country; that if any part of such voyage or transportation be unlawful, it is unlawful throughout; and that the vessel and her cargo are subject to capture; as well before arriving at the first neutral port at which she touches after her departure from England, as on the voyage or transportation by sea from such neutral port to the port of the enemy." [2]

Position of the United States.

This position of the United States, which has been so criticized, is liable to be abused to the disadvantage of neutral commerce. The absence of some such rule would open the door to acts which, though neutral in form, would be hostile in fact. It seemed necessary to allow the exercise of a certain amount of supervision over commerce of neutrals when it was destined to neutral ports having convenient communication with the enemy. This might extend to the seizure of neutral vessels bound for that port only in

[1] 3 Wall., 514.

[2] Blatchford's Prize Cases, 387, 405, 407.

form, provided there was no doubt as to the true destination, but such seizure was to be made with the greatest care not to violate the proper rights of neutrals. There was less reason for the general exercise of this supervision over vessels sailing to a neutral port which was separated from the belligerent territory by a considerable expanse of water, than for its exercise over vessels sailing to a port which was separated only by a narrow expanse of water. In cases where the neutral port was upon the same land area with the belligerent territory and had easy communication by rail or otherwise, so that it might become a natural port of entry for goods bound for one of the belligerents, the other belligerent might properly exercise a greater degree of authority in the supervision of commerce than would ordinarily be allowable. It was on this ground that England could justify her action in the seizure of vessels bound for Delagoa Bay during the war in South Africa, in 1899–1900; and similarly Italy justified her seizure of the Dutch vessel, *Doelwyk*, in August, 1896, during the Abyssinian war. This vessel was bound for a friendly port, but a port from which its cargo of war supplies would pass overland to the enemy without difficulty.

Rules of the Declaration of London, 1909.

(*b*) "The doctrine of continuous voyage in respect both of contraband and of blockade" was the subject of much controversy at the London Naval Conference in 1908–1909.

The United States Government had advanced the extremest claims under this doctrine during the Civil War of 1861–1865. It was acknowledged that these claims were made under exceptional circumstances.

Certain states had positively denied the existence of the rights claimed by states maintaining the doctrine of continuous voyage.

The Conference distinguishing between absolute and conditional contraband finally agreed upon the following only:—

"ART. 30. Absolute contraband is liable to capture if it is shown to be destined to territory belonging to or occupied by the enemy, or to the armed forces of the enemy. It is immaterial whether the carriage of the goods is direct or entails either transhipment or transport over land."

The right of capture was, however, extended to conditional contraband in the World War.

(*c*) After 1914, even the American Civil War doctrines of continuous voyage were extended. Great Britain in April, 1916, asked why the doctrine should not apply to goods bound for Germany "passing through some Swedish port and across the Baltic or even through neutral waters only."

Doctrine after 1914.

During the World War, the expression "continuous transportation" was sometimes used in case of goods passing over land. The sole test in some cases was the real ultimate destination of the goods regardless of immediate or intermediate stopping places.[1]

145. Angary

On March 21, 1918, the British Government communicated to its minister in the Netherlands that "After full consideration, the Associated Governments have decided to requisition the services of Dutch ships in their ports in exercise of the right of angary."[2] The idea of angary is ancient and refers to forced service. In early days the service of persons might in case of need be forced, but in modern times angary has been particularly applied to means of transport and communication. Many treaties even in the nineteenth century implied the existence of the right of angary and authors usually admitted the right. Towards the end of the century the practice was thought to be

[1] See the *Kim.* L. R. [1915], 215.

[2] Parliamentary Papers, Cd. 9025, No. 11 (1918) p. 2; *Zamora* (1916) 2 A. C. 77.

obsolete but during the World War the exercise of the right of angary was affirmed in seizing a large amount of neutral merchant shipping. The United States by a proclamation, March 20, 1918, thus took over a large number of vessels of Netherlands registry and used them during the War. After the Armistice the United States paid compensation for use or agreed value in case of loss.

146. Prize and Prize Courts

Prize.

(*a*) Prize is the general term applied to captures made at sea. The ships and goods of an enemy liable to capture by the laws of war, and the ships and goods of a neutral when involved in acts forbidden by the laws of war, may be brought into port for adjudication and disposition. Enemy's goods, except contraband of war, are not liable to capture on neutral ships.[1] Certain ships engaged in charitable or scientific pursuits, and coast fishing and trading vessels, are exempt from capture,[2] as are also certain specially exempted by treaty. In general other goods and vessels of the enemy are liable to capture. Contraband goods of a neutral, vessels attempting to violate blockade, vessels performing unneutral service, or goods or vessels otherwise involved in a way contrary to the laws of war are liable to capture.

National prize court.

(*b*) The national prize court is the tribunal which determines the rights of the parties concerned in the capture and the disposition of the goods or vessel. All captures belong to the state in whose name they are made. An inchoate title to the prize is acquired by possession, but complete title is acquired only after condemnation by a properly constituted prize court.

(1) A prize court may be established by the belligerent in its own state, in the territory where the belligerent has mili-

[1] Appendix, pp. xcviii, xcix, Articles 33, 35, 36.
[2] Appendix, p. lxxxiv.

tary jurisdiction or in the territory of an ally.[1] The establishment of a court in neutral jurisdiction is not permitted.[2]

Place of sitting.

When Genet, the minister of France, tried, in 1793, to set up consular prize courts in the United States, Washington protested and Genet was recalled. Takahashi says, "It is clear that if we admit the prevailing principle concerning the establishment of a prize court in a belligerent's own dominions or its ally's, or in occupied territory, we may infer that a court can be held on the deck of a man-of-war — a floating portion of a territorial sovereignty — lying in the above-mentioned waters, provided the processes of procedure are followed."[3] He maintains, however, that a court might not be established on the high seas, as proper procedure for the interested parties would not be possible.

Methods of procedure.

(2) The tribunals which have jurisdiction of prize cases differ in the different countries. In the United States, the District Courts possess the powers of a prize court, and an appeal lies to the Supreme Court.[4]

Dana calls the prize tribunal *an inquest by the state*, and regards it as the means by which the sovereign "desires and is required to inform himself, by recognized modes, of the lawfulness of the capture."

The methods of procedure of prize courts are similar in different countries.[5] The practice in the United States is as follows: —

The commanding officer of the capturing vessel, after securing the cargo and documents of the captured vessel, makes an inventory of the last named, seals them and sends them, together with the master, one or more of the other officers, the supercargo, purser, or agent of the prize, and also any one on board

[1] Halleck, II, p. 431. [2] Appendix, p. lxxxvii.
[3] Takahashi, Chino-Japanese, p. 105.
[4] Judicial Code, March 3, 1911; 1 U. S. Comp. Sts. § 991(3); 2 *ibid.* § 1215.
[5] Takahashi, Russo-Japanese, 527.

supposed to have information, under charge of a prize master and a prize crew, into port to be placed in the custody of the court. The prize master delivers the documents and the inventory to prize commissioners, who are appointed by the court, and reports to the district attorney, who files a libel against the prize property and sees "that the proper preparatory evidence is taken by the prize commissioners, and that the prize commissioners also take the depositions *de bene esse* of the prize crew, and of other transient persons cognizant of any facts bearing on condemnation or distribution."[1] The libel should "properly contain only a description of the prize, with dates, etc., for identification, and the fact that it was taken as prize of war by the cruiser, and brought to the court for adjudication, that is, of facts enough to show that it is a maritime cause of prize jurisdiction and not a case of municipal penalty or forfeiture."[2] Notice is then published that citizens or neutrals, but not enemies, interested in the prize property shall appear and enter their claims. As there are no allegations in the libel, the answer of the claimant is only a general denial under oath. The prize commissioners then examine the witnesses privately; and this evidence, which is kept in secret until complete, is called *in preparatorio*.[3] If the court is in doubt it will order "further proof," that is, besides the ship, cargo, documents, and witnesses. The burden is on the claimant to prove title.[4] If the claimant's right is not sufficiently established, the property is condemned. The captors are, however, liable to damages if there is found no probable cause for the capture.[5]

[1] 7 U. S. Comp. Sts. §§ 8393 *et seq.* [2] Wheat. D., n. 186, III.

[3] Wheat. D., n. 186, III; The *Springbok*, 5 Wall. 1; The *Sir William Peel*, *ibid.*, 517.

[4] Wheat. D., n. 186, III.

[5] The *La Manche*, 2 Sprague, 207. The method of procedure in a prize court, in case of enemy property, is given in Appendix, pp. cxxxviii *et seq.* With a few changes, the same forms may be used in the case of neutral property. See further on the method of procedure in a prize court, Takahashi, Chino-Japanese, pp. 11 *et seq.*, 73–107, 172–191.

(*c*) It has been the general practice to distribute as prize money the proceeds, or a part of the proceeds, of a capture among the captors. This distribution is a matter of municipal law. In England the sum realized from the sale of the goods and vessel may be distributed among the captors, though the crown reserves the right to decide what interest the captors shall have, if any.[1] By a royal decree of June 20, 1864, Prussia provided in detail what each of those participating in the capture should receive.[2] By the act of March 3, 1899, the United States provided that "all provisions of law authorizing the distribution among captors of the whole, or any portion, of the proceeds of vessels, or any property hereafter captured, condemned as prize, or providing for the payment of bounty for the sinking or destruction of vessels of the enemy hereafter occurring in time of war, are hereby repealed." [3]

Prize money.

(*d*) The Hague Conference of 1907 declared that it had agreed upon a Convention for the Creation of an International Prize Court, "animated by the desire to settle in an equitable manner the differences which sometimes arise in the course of a naval war in connection with the decisions of National Prize Courts." This Convention was not ratified.

The proposed International Prize Court.

Article VII of this Hague Convention provided that "in the absence of treaty provisions covering a given case, the Court shall apply the rules of international law. If no generally recognized rule exists, the Court shall give judgment in accordance with the general principles of justice and equity."

Certain states were uncertain as to the interpretation which would be given under this clause of Article VII. Accordingly, on the invitation of Great Britain, a conference, known as the

[1] 27 and 28 Vict., c. 25.
[2] Perels, "Manuel Droit Maritime Int.," p. 457.
[3] 30 U. S. Sts. at Large, 1007.

International Naval Conference, of ten powers — Germany, United States, Austria-Hungary, Spain, France, Great Britain, Italy, Japan, Netherlands, Russia — assembled at London, December 4, 1908, and on February 26, 1909, concluded the Declaration of London, which announces in the Preliminary Provision that: —

International Naval Conference.

"The Signatory Powers are agreed that the rules contained in the following chapters correspond in substance with the generally recognized principles of international law." [1]

The chapters of this Declaration are: —

1. Blockade in time of war.
2. Contraband of war.
3. Unneutral service.
4. Destruction of neutral prizes.
5. Transfer to a neutral flag.
6. Enemy character.
7. Convoy.
8. Resistance to search.
9. Compensation.

Powers not represented at the London Naval Conference were invited to accede to the Declaration.

Neither the Convention for the Creation of an International Prize Court nor the Declaration of London was ratified, though both may serve as bases for subsequent agreements. The provisions of the Declaration of London were followed in some of the wars subsequent to 1909 and often referred to in decisions during and after the World War.

[1] For full text of Declaration of London, see Appendix, p. xcii.

APPENDIX I

INSTRUCTIONS FOR THE GOVERNMENT OF ARMIES OF THE UNITED STATES IN THE FIELD

WAR DEPARTMENT,
ADJUTANT GENERAL'S OFFICE,
Washington, April 24, 1863.

GENERAL ORDERS, No. 100.

The following "Instructions for the Government of Armies of the United States in the Field," prepared by FRANCIS LIEBER, LL.D., and revised by a Board of Officers, of which Major General E. A. HITCHCOCK is president, having been approved by the President of the United States, he commands that they be published for the information of all concerned.

BY ORDER OF THE SECRETARY OF WAR:

E. D. TOWNSEND,
Assistant Adjutant General.

INSTRUCTIONS FOR THE GOVERNMENT OF ARMIES OF THE UNITED STATES IN THE FIELD

SECTION I

MARTIAL LAW—MILITARY JURISDICTION—MILITARY NECESSITY—RETALIATION

1

A place, district, or country occupied by an enemy stands, in consequence of the occupation, under the Martial Law of the invading or occupying army, whether any proclamation declaring Martial Law, or any public warning to the inhabitants, has been issued or not. Martial Law is the immediate and direct effect and consequence of occupation or conquest.

The presence of a hostile army proclaims its Martial Law.

2

Martial Law does not cease during the hostile occupation, except by special proclamation, ordered by the commander in chief; or by special mention in the treaty of peace concluding the war, when the occupation of a place or territory continues beyond the conclusion of peace as one of the conditions of the same.

3

Martial Law in a hostile country consists in the suspension, by the occupying military authority, of the criminal and civil law, and of the domestic administration and government in the occupied place or territory, and in the substitution of military rule and force for the same, as well as in the dictation of general laws, as far as military necessity requires this suspension, substitution, or dictation.

The commander of the forces may proclaim that the administration of all civil and penal law shall continue either wholly or in part, as in times of peace, unless otherwise ordered by the military authority.

4

Martial Law is simply military authority exercised in accordance with the laws and usages of war. Military oppression is not Martial Law; it is the abuse of the power which that law confers. As Martial Law is executed by military force, it is incumbent upon those who administer it to be strictly guided by the principles of justice, honor, and humanity—virtues adorning a soldier even more than other men, for the very reason that he possesses the power of his arms against the unarmed.

5

Martial Law should be less stringent in places and countries fully occupied and fairly conquered. Much greater severity may be exercised in places or regions where actual hostilities exist, or are expected and must be prepared for. Its most complete sway is allowed—even in the commander's own country—when face to face with the enemy, because of the absolute necessities of the case, and of the paramount duty to defend the country against invasion.

To save the country is paramount to all other considerations.

6

All civil and penal law shall continue to take its usual course in the enemy's places and territories under Martial Law, unless interrupted

or stopped by order of the occupying military power; but all the functions of the hostile government—legislative, executive, or administrative—whether of a general, provincial, or local character, cease under Martial Law, or continue only with the sanction, or, if deemed necessary, the participation of the occupier or invader.

7

Martial Law extends to property, and to persons, whether they are subjects of the enemy or aliens to that government.

8

Consuls, among American and European nations, are not diplomatic agents. Nevertheless, their offices and persons will be subjected to Martial Law in cases of urgent necessity only: their property and business are not exempted. Any delinquency they commit against the established military rule may be punished as in the case of any other inhabitant, and such punishment furnishes no reasonable ground for international complaint.

9

The functions of Ambassadors, Ministers, or other diplomatic agents, accredited by neutral powers to the hostile government, cease, so far as regards the displaced government; but the conquering or occupying power usually recognizes them as temporarily accredited to itself.

10

Martial Law affects chiefly the police and collection of public revenue and taxes, whether imposed by the expelled government or by the invader, and refers mainly to the support and efficiency of the army, its safety, and the safety of its operations.

11

The law of war does not only disclaim all cruelty and bad faith concerning engagements concluded with the enemy during the war, but also the breaking of stipulations solemnly contracted by the belligerents in time of peace, and avowedly intended to remain in force in case of war between the contracting powers.

It disclaims all extortions and other transactions for individual gain; all acts of private revenge, or connivance at such acts.

Offenses to the contrary shall be severely punished, and especially so if committed by officers.

12

Whenever feasible, Martial Law is carried out in cases of individual offenders by Military Courts; but sentences of death shall be executed only with the approval of the chief executive, provided the urgency of the case does not require a speedier execution, and then only with the approval of the chief commander.

13

Military jurisdiction is of two kinds: First, that which is conferred and defined by statute; second, that which is derived from the common law of war. Military offenses under the statute law must be tried in the manner therein directed; but military offenses which do not come within the statute must be tried and punished under the common law of war. The character of the courts which exercise these jurisdictions depends upon the local laws of each particular country.

In the armies of the United States the first is exercised by courts-martial, while cases which do not come within the "Rules and Articles of War," or the jurisdiction conferred by statute on courts-martial, are tried by military commissions.

14

Military necessity, as understood by modern civilized nations, consists in the necessity of those measures which are indispensable for securing the ends of the war, and which are lawful according to the modern law and usages of war.

15

Military necessity admits of all direct destruction of life or limb of *armed* enemies, and of other persons whose destruction is incidentally *unavoidable* in the armed contests of the war; it allows of the capturing of every armed enemy, and every enemy of importance to the hostile government, or of peculiar danger to the captor; it allows of all destruction of property, and obstruction of the ways and channels of traffic, travel, or communication, and of all withholding of sustenance or means of life from the enemy; of the appropriation of whatever an enemy's country affords necessary for the subsistence and safety of the army, and of such deception as does not involve the breaking of good faith either positively pledged, regarding agreements entered into during the war, or supposed by the modern law of war to exist. Men who take up arms against one another in public war do

not cease on this account to be moral beings, responsible to one another and to God.

16

Military necessity does not admit of cruelty—that is, the infliction of suffering for the sake of suffering or for revenge, nor of maiming or wounding except in fight, nor of torture to extort confessions. It does not admit of the use of poison in any way, nor of the wanton devastation of a district. It admits of deception, but disclaims acts of perfidy; and, in general, military necessity does not include any act of hostility which makes the return to peace unnecessarily difficult.

17

War is not carried on by arms alone. It is lawful to starve the hostile belligerent, armed or unarmed, so that it leads to the speedier subjection of the enemy.

18

When a commander of a besieged place expels the noncombatants, in order to lessen the number of those who consume his stock of provisions, it is lawful, though an extreme measure, to drive them back, so as to hasten on the surrender.

19

Commanders, whenever admissible, inform the enemy of their intention to bombard a place, so that the noncombatants, and especially the women and children, may be removed before the bombardment commences. But it is no infraction of the common law of war to omit thus to inform the enemy. Surprise may be a necessity.

20

Public war is a state of armed hostility between sovereign nations or governments. It is a law and requisite of civilized existence that men live in political, continuous societies, forming organized units, called states or nations, whose constituents bear, enjoy, and suffer, advance and retrograde together, in peace and in war.

21

The citizen or native of a hostile country is thus an enemy, as one of the constituents of the hostile state or nation, and as such is subjected to the hardships of the war.

22

Nevertheless, as civilization has advanced during the last centuries, so has likewise steadily advanced, especially in war on land, the distinction between the private individual belonging to a hostile country and the hostile country itself, with its men in arms. The principle has been more and more acknowledged that the unarmed citizen is to be spared in person, property, and honor as much as the exigencies of war will admit.

23

Private citizens are no longer murdered, enslaved, or carried off to distant parts, and the inoffensive individual is as little disturbed in his private relations as the commander of the hostile troops can afford to grant in the overruling demands of a vigorous war.

24

The almost universal rule in remote times was, and continues to be with barbarous armies, that the private individual of the hostile country is destined to suffer every privation of liberty and protection, and every disruption of family ties. Protection was, and still is with uncivilized people, the exception.

25

In modern regular wars of the Europeans, and their descendants in other portions of the globe, protection of the inoffensive citizen of the hostile country is the rule; privation and disturbance of private relations are the exceptions.

26

Commanding generals may cause the magistrates and civil officers of the hostile country to take the oath of temporary allegiance or an oath of fidelity to their own victorious government or rulers, and they may expel every one who declines to do so. But whether they do so or not, the people and their civil officers owe strict obedience to them as long as they hold sway over the district or country, at the peril of their lives.

27

The law of war can no more wholly dispense with retaliation than can the law of nations, of which it is a branch. Yet civilized nations acknowledge retaliation as the sternest feature of war. A reckless enemy often leaves to his opponent no other means of securing himself against the repetition of barbarous outrage.

28

Retaliation will, therefore, never be resorted to as a measure of mere revenge, but only as a means of protective retribution, and moreover, cautiously and unavoidably; that is to say, retaliation shall only be resorted to after careful inquiry into the real occurrence, and the character of the misdeeds that may demand retribution.

Unjust or inconsiderate retaliation removes the belligerents farther and farther from the mitigating rules of regular war, and by rapid steps leads them nearer to the internecine wars of savages.

29

Modern times are distinguished from earlier ages by the existence, at one and the same time, of many nations and great governments related to one another in close intercourse.

Peace is their normal condition; war is the exception. The ultimate object of all modern war is a renewed state of peace.

The more vigorously wars are pursued, the better it is for humanity. Sharp wars are brief.

30

Ever since the formation and coexistence of modern nations, and ever since wars have become great national wars, war has come to be acknowledged not to be its own end, but the means to obtain great ends of state, or to consist in defense against wrong; and no conventional restriction of the modes adopted to injure the enemy is any longer admitted; but the law of war imposes many limitations and restrictions on principles of justice, faith, and honor.

SECTION II

Public and Private Property of the Enemy—Protection of Persons, and especially of Women; of Religion, the Arts and Sciences—Punishment of Crimes against the Inhabitants of Hostile Countries

31

A victorious army appropriates all public money, seizes all public movable property until further direction by its government, and sequesters for its own benefit or of that of its government all the revenues of real property belonging to the hostile government or nation. The title to such real property remains in abeyance during military occupation, and until the conquest is made complete.

32

A victorious army, by the martial power inherent in the same, may suspend, change, or abolish, as far as the martial power extends, the relations which arise from the services due, according to the existing laws of the invaded country, from one citizen, subject, or native of the same to another.

The commander of the army must leave it to the ultimate treaty of peace to settle the permanency of this change.

33

It is no longer considered lawful—on the contrary, it is held to be a serious breach of the law of war—to force the subjects of the enemy into the service of the victorious government, except the latter should proclaim, after a fair and complete conquest of the hostile country or district, that it is resolved to keep the country, district, or place permanently as its own and make it a portion of its own country.

34

As a general rule, the property belonging to churches, to hospitals, or other establishments of an exclusively charitable character, to establishments of education, or foundations for the promotion of knowledge, whether public schools, universities, academies of learning or observatories, museums of the fine arts, or of a scientific character—such property is not to be considered public property in the sense of paragraph 31; but it may be taxed or used when the public service may require it.

35

Classical works of art, libraries, scientific collections, or precious instruments, such as astronomical telescopes, as well as hospitals, must be secured against all avoidable injury, even when they are contained in fortified places whilst besieged or bombarded.

36

If such works of art, libraries, collections, or instruments belonging to a hostile nation or government, can be removed without injury, the ruler of the conquering state or nation may order them to be seized and removed for the benefit of the said nation. The ultimate ownership is to be settled by the ensuing treaty of peace.

In no case shall they be sold or given away, if captured by the ar-

mies of the United States, nor shall they ever be privately appropriated, or wantonly destroyed or injured.

37

The United States acknowledge and protect, in hostile countries occupied by them, religion and morality; strictly private property; the persons of the inhabitants, especially those of women; and the sacredness of domestic relations. Offenses to the contrary shall be rigorously punished.

This rule does not interfere with the right of the victorious invader to tax the people or their property, to levy forced loans, to billet soldiers, or to appropriate property, especially houses, lands, boats or ships, and churches, for temporary and military uses.

38

Private property, unless forfeited by crimes or by offenses of the owner, can be seized only by way of military necessity, for the support or other benefit of the army or of the United States.

If the owner has not fled, the commanding officer will cause receipts to be given, which may serve the spoliated owner to obtain indemnity.

39

The salaries of civil officers of the hostile government who remain in the invaded territory, and continue the work of their office, and can continue it according to the circumstances arising out of the war —such as judges, administrative or police officers, officers of city or communal governments—are paid from the public revenue of the invaded territory, until the military government has reason wholly or partially to discontinue it. Salaries or incomes connected with purely honorary titles are always stopped.

40

There exists no law or body of authoritative rules of action between hostile armies, except that branch of the law of nature and nations which is called the law and usages of war on land.

41

All municipal law of the ground on which the armies stand, or of the countries to which they belong, is silent and of no effect between armies in the field.

42

Slavery, complicating and confounding the ideas of property (that is of a *thing*), and of personality (that is of *humanity*), exists according to municipal or local law only. The law of nature and nations has never acknowledged it. The digest of the Roman law enacts the early dictum of the pagan jurist, that "so far as the law of nature is concerned, all men are equal." Fugitives escaping from a country in which they were slaves, villains, or serfs, into another country, have, for centuries past, been held free and acknowledged free by judicial decisions of European countries, even though the municipal law of the country in which the slave had taken refuge acknowledged slavery within its own dominions.

43

Therefore, in a war between the United States and a belligerent which admits of slavery, if a person held in bondage by that belligerent be captured by or come as a fugitive under the protection of the military forces of the United States, such person is immediately entitled to the rights and privileges of a freeman. To return such person into slavery would amount to enslaving a free person, and neither the United States nor any officer under their authority can enslave any human being. Moreover, a person so made free by the law of war is under the shield of the law of nations, and the former owner or State can have, by the law of postliminy, no belligerent lien or claim of service.

44

All wanton violence committed against persons in the invaded country, all destruction of property not commanded by the authorized officer, all robbery, all pillage or sacking, even after taking a place by main force, all rape, wounding, maiming, or killing of such inhabitants, are prohibited under the penalty of death, or such other severe punishment as may seem adequate for the gravity of the offense.

A soldier, officer or private, in the act of committing such violence, and disobeying a superior ordering him to abstain from it, may be lawfully killed on the spot by such superior.

45

All captures and booty belong, according to the modern law of war, primarily to the government of the captor.

Prize money, whether on sea or land, can now only be claimed under local law.

46

Neither officers nor soldiers are allowed to make use of their position or power in the hostile country for private gain, not even for commercial transactions otherwise legitimate. Offenses to the contrary committed by commissioned officers will be punished with cashiering or such other punishment as the nature of the offense may require; if by soldiers, they shall be punished according to the nature of the offense.

47

Crimes punishable by all penal codes, such as arson, murder, maiming, assaults, highway robbery, theft, burglary, fraud, forgery, and rape, if committed by an American soldier in a hostile country against its inhabitants, are not only punishable as at home, but in all cases in which death is not inflicted, the severer punishment shall be preferred.

SECTION III

Deserters—Prisoners of War—Hostages—Booty on the Battlefield

48

Deserters from the American Army, having entered the service of the enemy, suffer death if they fall again into the hands of the United States, whether by capture, or being delivered up to the American Army; and if a deserter from the enemy, having taken service in the Army of the United States is captured by the enemy, and punished by them with death or otherwise, it is not a breach against the law and usages of war, requiring redress or retaliation.

49

A prisoner of war is a public enemy armed or attached to the hostile army for active aid, who has fallen into the hands of the captor, either fighting or wounded, on the field or in the hospital, by individual surrender, or by capitulation.

All soldiers, of whatever species of arms; all men who belong to the rising *en masse* of the hostile country; all those who are attached to the army for its efficiency and promote directly the object of the war, except such as are hereinafter provided for; all disabled men or officers on the field or elsewhere, if captured; all enemies who have thrown

away their arms and ask for quarter, are prisoners of war, and as such exposed to the inconveniences as well as entitled to the privileges of a prisoner of war.

50

Moreover, citizens who accompany an army for whatever purpose, such as sutlers, editors, or reporters of journals, or contractors, if captured, may be made prisoners of war, and be detained as such.

The monarch and members of the reigning hostile family, male or female, the chief, and chief officers of the hostile government, its diplomatic agents, and all persons who are of particular and singular use and benefit to the hostile army or its government, are, if captured, on belligerent ground, and if unprovided with a safe conduct granted by the captor's government, prisoners of war.

51

If the people of that portion of an invaded country which is not yet occupied by the enemy, or of the whole country, at the approach of a hostile army, rise, under a duly authorized levy, *en masse* to resist the invader, they are now treated as public enemies, and, if captured, are prisoners of war.

52

No belligerent has the right to declare that he will treat every captured man in arms of a levy *en masse* as a brigand or bandit.

If, however, the people of a country, or any portion of the same, already occupied by an army, rise against it, they are violators of the laws of war, and are not entitled to their protection.

53

The enemy's chaplains, officers of the medical staff, apothecaries, hospital nurses and servants, if they fall into the hands of the American Army, are not prisoners of war, unless the commander has reasons to retain them. In this latter case, or if, at their own desire, they are allowed to remain with their captured companions, they are treated as prisoners of war, and may be exchanged if the commander sees fit.

54

A hostage is a person accepted as a pledge for the fulfillment of an agreement concluded between belligerents during the war, or in consequence of a war. Hostages are rare in the present age.

55

If a hostage is accepted, he is treated like a prisoner of war, according to rank and condition, as circumstances may admit.

56

A prisoner of war is subject to no punishment for being a public enemy, nor is any revenge wreaked upon him by the intentional infliction of any suffering, or disgrace, by cruel imprisonment, want of food, by mutilation, death, or any other barbarity.

57

So soon as a man is armed by a sovereign government and takes the soldier's oath of fidelity, he is a belligerent; his killing, wounding, or other warlike acts are not individual crimes or offenses. No belligerent has a right to declare that enemies of a certain class, color, or condition, when properly organized as soldiers, will not be treated by him as public enemies.

58

The law of nations knows of no distinction of color, and if an enemy of the United States should enslave and sell any captured persons of their army, it would be a case for the severest retaliation, if not redressed upon complaint.

The United States cannot retaliate by enslavement; therefore death must be the retaliation for this crime against the law of nations.

59

A prisoner of war remains answerable for his crimes committed against the captor's army or people, committed before he was captured, and for which he has not been punished by his own authorities.

All prisoners of war are liable to the infliction of retaliatory measures.

60

It is against the usage of modern war to resolve, in hatred and revenge, to give no quarter. No body of troops has the right to declare that it will not give, and therefore will not expect, quarter; but a commander is permitted to direct his troops to give no quarter, in great straits, when his own salvation makes it *impossible* to cumber himself with prisoners.

61

Troops that give no quarter have no right to kill enemies already disabled on the ground, or prisoners captured by other troops.

62

All troops of the enemy known or discovered to give no quarter in general, or to any portion of the army, receive none.

63

Troops who fight in the uniform of their enemies, without any plain, striking, and uniform mark of distinction of their own, can expect no quarter.

64

If American troops capture a train containing uniforms of the enemy, and the commander considers it advisable to distribute them for use among his men, some striking mark or sign must be adopted to distinguish the American soldier from the enemy.

65

The use of the enemy's national standard, flag, or other emblem of nationality, for the purpose of deceiving the enemy in battle, is an act of perfidy by which they lose all claim to the protection of the laws of war.

66

Quarter having been given to an enemy by American troops, under a misapprehension of his true character, he may, nevertheless, be ordered to suffer death if, within three days after the battle, it be discovered that he belongs to a corps which gives no quarter.

67

The law of nations allows every sovereign government to make war upon another sovereign state, and, therefore, admits of no rules or laws different from those of regular warfare, regarding the treatment of prisoners of war, although they may belong to the army of a government which the captor may consider as a wanton and unjust assailant.

68

Modern wars are not internecine wars, in which the killing of the enemy is the object. The destruction of the enemy in modern war,

and, indeed, modern war itself, are means to obtain that object of the belligerent which lies beyond the war.

Unnecessary or revengeful destruction of life is not lawful.

69

Outposts, sentinels, or pickets are not to be fired upon, except to drive them in, or when a positive order, special or general, has been issued to that effect.

70

The use of poison in any manner, be it to poison wells, or food, or arms, is wholly excluded from modern warfare. He that uses it puts himself out of the pale of the law and usages of war.

71

Whoever intentionally inflicts additional wounds on an enemy already wholly disabled, or kills such an enemy, or who orders or encourages soldiers to do so, shall suffer death, if duly convicted, whether he belongs to the Army of the United States, or is an enemy captured after having committed his misdeed.

72

Money and other valuables on the person of a prisoner, such as watches or jewelry, as well as extra clothing, are regarded by the American Army as the private property of the prisoner, and the appropriation of such valuables or money is considered dishonorable, and is prohibited.

Nevertheless, if *large* sums are found upon the persons of prisoners, or in their possession, they shall be taken from them, and the surplus, after providing for their own support, appropriated for the use of the army, under the direction of the commander, unless otherwise ordered by the government. Nor can prisoners claim, as private property, large sums found and captured in their train, although they have been placed in the private luggage of the prisoners.

73

All officers, when captured, must surrender their side arms to the captor. They may be restored to the prisoner in marked cases, by the commander, to signalize admiration of his distinguished bravery or approbation of his humane treatment of prisoners before his cap-

ture. The captured officer to whom they may be restored cannot wear them during captivity.

74

A prisoner of war, being a public enemy, is the prisoner of the government, and not of the captor. No ransom can be paid by a prisoner of war to his individual captor or to any officer in command. The government alone releases captives, according to rules prescribed by itself.

75

Prisoners of war are subject to confinement or imprisonment such as may be deemed necessary on account of safety, but they are to be subjected to no other intentional suffering or indignity. The confinement and mode of treating a prisoner may be varied during his captivity according to the demands of safety.

76

Prisoners of war shall be fed upon plain and wholesome food, whenever practicable, and treated with humanity.

They may be required to work for the benefit of the captor's government, according to their rank and condition.

77

A prisoner of war who escapes may be shot or otherwise killed in his flight; but neither death nor any other punishment shall be inflicted upon him simply for his attempt to escape, which the law of war does not consider a crime. Stricter means of security shall be used after an unsuccessful attempt at escape.

If, however, a conspiracy is discovered, the purpose of which is a united or general escape, the conspirators may be rigorously punished, even with death; and capital punishment may also be inflicted upon prisoners of war discovered to have plotted rebellion against the authorities of the captors, whether in union with fellow prisoners or other persons.

78

If prisoners of war, having given no pledge nor made any promise on their honor, forcibly or otherwise escape, and are captured again in battle after having rejoined their own army, they shall not be punished for their escape, but shall be treated as simple prisoners of war, although they will be subjected to stricter confinement.

79

Every captured wounded enemy shall be medically treated, according to the ability of the medical staff.

80

Honorable men, when captured, will abstain from giving to the enemy information concerning their own army, and the modern law of war permits no longer the use of any violence against prisoners in order to extort the desired information or to punish them for having given false information.

SECTION IV

omitted

Partisans—Armed Enemies not belonging to the Hostile Army —Scouts—Armed Prowlers—War-rebels

81

Partisans are soldiers armed and wearing the uniform of their army, but belonging to a corps which acts detached from the main body for the purpose of making inroads into the territory occupied by the enemy. If captured, they are entitled to all the privileges of the prisoner of war.

82

Men, or squads of men, who commit hostilities, whether by fighting, or inroads for destruction or plunder, or by raids of any kind, without commission, without being part and portion of the organized hostile army, and without sharing continuously in the war, but who do so with intermitting returns to their homes and avocations, or with the occasional assumption of the semblance of peaceful pursuits, divesting themselves of the character or appearance of soldiers—such men, or squads of men, are not public enemies, and, therefore, if captured, are not entitled to the privileges of prisoners of war, but shall be treated summarily as highway robbers or pirates.

83

Scouts, or single soldiers, if disguised in the dress of the country or in the uniform of the army hostile to their own, employed in obtaining information, if found within or lurking about the lines of the captor, are treated as spies, and suffer death.

84

Armed prowlers, by whatever names they may be called, or persons of the enemy's territory, who steal within the lines of the hostile army for the purpose of robbing, killing, or of destroying bridges, roads, or canals, or of robbing or destroying the mail, or of cutting the telegraph wires, are not entitled to the privileges of the prisoner of war.

85

War-rebels are persons within an occupied territory who rise in arms against the occupying or conquering army, or against the authorities established by the same. If captured, they may suffer death, whether they rise singly, in small or large bands, and whether called upon to do so by their own, but expelled, government or not. They are not prisoners of war; nor are they if discovered and secured before their conspiracy has matured to an actual rising or armed violence.

SECTION V

Safe-conduct—Spies—War-traitors—Captured Messengers

86

All intercourse between the territories occupied by belligerent armies, whether by traffic, by letter, by travel, or in any other way, ceases. This is the general rule, to be observed without special proclamation.

Exceptions to this rule, whether by safe-conduct, or permission to trade on a small or large scale, or by exchanging mails, or by travel from one territory into the other, can take place only according to agreement approved by the government, or by the highest military authority.

Contraventions of this rule are highly punishable.

87

Ambassadors, and all other diplomatic agents of neutral powers, accredited to the enemy, may receive safe-conducts through the territories occupied by the belligerents, unless there are military reasons to the contrary, and unless they may reach the place of their destination conveniently by another route. It implies no international af-

front if the safe-conduct is declined. Such passes are usually given by the supreme authority of the State and not by subordinate officers.

88

A spy is a person who secretly, in disguise or under false pretense, seeks information with the intention of communicating it to the enemy.

The spy is punishable with death by hanging by the neck, whether or not he succeed in obtaining the information or in conveying it to the enemy.

89

If a citizen of the United States obtains information in a legitimate manner, and betrays it to the enemy, be he a military or civil officer, or a private citizen, he shall suffer death.

90

A traitor under the law of war, or a war-traitor, is a person in a place or district under martial law who, unauthorized by the military commander, gives information of any kind to the enemy, or holds intercourse with him.

91

The war-traitor is always severely punished. If his offense consists in betraying to the enemy anything concerning the condition, safety, operations, or plans of the troops holding or occupying the place or district, his punishment is death.

92

If the citizen or subject of a country or place invaded or conquered gives information to his own government, from which he is separated by the hostile army, or to the army of his government, he is a war-traitor, and death is the penalty of his offense.

93

All armies in the field stand in need of guides, and impress them if they cannot obtain them otherwise.

94

No person having been forced by the enemy to serve as guide is punishable for having done so.

95

If a citizen of a hostile and invaded district voluntarily serves as a guide to the enemy, or offers to do so, he is deemed a war-traitor, and shall suffer death.

96

A citizen serving voluntarily as a guide against his own country commits treason, and will be dealt with according to the law of his country.

97

Guides, when it is clearly proved that they have misled intentionally, may be put to death.

98

All unauthorized or secret communication with the enemy is considered treasonable by the law of war.

Foreign residents in an invaded or occupied territory, or foreign visitors in the same, can claim no immunity from this law. They may communicate with foreign parts, or with the inhabitants of the hostile country, so far as the military authority permits, but no further. Instant expulsion from the occupied territory would be the very least punishment for the infraction of this rule.

99

A messenger carrying written dispatches or verbal messages from one portion of the army, or from a besieged place, to another portion of the same army, or its government, if armed, and in the uniform of his army, and if captured, while doing so, in the territory occupied by the enemy, is treated by the captor as a prisoner of war. If not in uniform, nor a soldier, the circumstances connected with his capture must determine the disposition that shall be made of him.

100

A messenger or agent who attempts to steal through the territory occupied by the enemy, to further, in any manner, the interests of the enemy, if captured, is not entitled to the privileges of the prisoner of war, and may be dealt with according to the circumstances of the case.

101

While deception in war is admitted as a just and necessary means of hostility, and is consistent with honorable warfare, the common

law of war allows even capital punishment for clandestine or treacherous attempts to injure an enemy, because they are so dangerous, and it is so difficult to guard against them.

102

The law of war, like the criminal law regarding other offenses, makes no difference on account of the difference of sexes, concerning the spy, the war-traitor, or the war-rebel.

103

Spies, war-traitors, and war-rebels are not exchanged according to the common law of war. The exchange of such persons would require a special cartel, authorized by the government, or, at a great distance from it, by the chief commander of the army in the field.

104

A successful spy or war-traitor, safely returned to his own army, and afterwards captured as an enemy, is not subject to punishment for his acts as a spy or war-traitor, but he may be held in closer custody as a person individually dangerous.

SECTION VI omitted

Exchange of Prisoners—Flags of Truce—Abuse of the Flag of Truce—Flags of Protection

105

Exchanges of prisoners take place—number for number—rank for rank—wounded for wounded—with added condition for added condition—such, for instance, as not to serve for a certain period.

106

In exchanging prisoners of war, such numbers of persons of inferior rank may be substituted as an equivalent for one of superior rank as may be agreed upon by cartel, which requires the sanction of the government, or of the commander of the army in the field.

107

A prisoner of war is in honor bound truly to state to the captor his rank; and he is not to assume a lower rank than belongs to him,

in order to cause a more advantageous exchange, nor a higher rank, for the purpose of obtaining better treatment.

Offenses to the contrary have been justly punished by the commanders of released prisoners, and may be good cause for refusing to release such prisoners.

108

The surplus number of prisoners of war remaining after an exchange has taken place is sometimes released either for the payment of a stipulated sum of money, or, in urgent cases, of provision, clothing, or other necessaries.

Such arrangement, however, requires the sanction of the highest authority.

109

The exchange of prisoners of war is an act of convenience to both belligerents. If no general cartel has been concluded, it cannot be demanded by either of them. No belligerent is obliged to exchange prisoners of war.

A cartel is voidable as soon as either party has violated it.

110

No exchange of prisoners shall be made except after complete capture, and after an accurate account of them, and a list of the captured officers, has been taken.

111

The bearer of a flag of truce cannot insist upon being admitted. He must always be admitted with great caution. Unnecessary frequency is carefully to be avoided.

112

If the bearer of a flag of truce offer himself during an engagement, he can be admitted as a very rare exception only. It is no breach of good faith to retain such flag of truce, if admitted during the engagement. Firing is not required to cease on the appearance of a flag of truce in battle.

113

If the bearer of a flag of truce, presenting himself during an engagement, is killed or wounded, it furnishes no ground of complaint whatever.

114

If it be discovered, and fairly proved, that a flag of truce has been abused for surreptitiously obtaining military knowledge, the bearer of the flag thus abusing his sacred character is deemed a spy.

So sacred is the character of a flag of truce, and so necessary is its sacredness, that while its abuse is an especially heinous offense, great caution is requisite, on the other hand, in convicting the bearer of a flag of truce as a spy.

115

It is customary to designate by certain flags (usually yellow) the hospitals in places which are shelled, so that the besieging enemy may avoid firing on them. The same has been done in battles, when hospitals are situated within the field of the engagement.

116

Honorable belligerents often request that the hospitals within the territory of the enemy may be designated, so that they may be spared.

An honorable belligerent allows himself to be guided by flags or signals of protection as much as the contingencies and the necessities of the fight will permit.

117

It is justly considered an act of bad faith, of infamy or fiendishness, to deceive the enemy by flags of protection. Such act of bad faith may be good cause for refusing to respect such flags.

118

The besieging belligerent has sometimes requested the besieged to designate the buildings containing collections of works of art, scientific museums, astronomical observatories, or precious libraries, so that their destruction may be avoided as much as possible.

SECTION VII

The Parole

(revised).

119

Prisoners of war may be released from captivity by exchange, and, under certain circumstances, also by parole.

120

The term "Parole" designates the pledge of individual good faith and honor to do, or to omit doing, certain acts after he who gives his parole shall have been dismissed, wholly or partially, from the power of the captor.

121

The pledge of the parole is always an individual, but not a private act.

122

The parole applies chiefly to prisoners of war whom the captor allows to return to their country, or to live in greater freedom within the captor's country or territory, on conditions stated in the parole.

123

Release of prisoners of war by exchange is the general rule; release by parole is the exception.

124

Breaking the parole is punished with death when the person breaking the parole is captured again.

Accurate lists, therefore, of the paroled persons must be kept by the belligerents.

125

When paroles are given and received there must be an exchange of two written documents, in which the name and rank of the paroled individuals are accurately and truthfully stated.

126

Commissioned officers only are allowed to give their parole, and they can give it only with the permission of their superior, as long as a superior in rank is within reach.

127

No noncommissioned officer or private can give his parole except through an officer. Individual paroles not given through an officer are not only void, but subject the individuals giving them to the punishment of death as deserters. The only admissible exception is where individuals, properly separated from their commands, have suffered long confinement without the possibility of being paroled through an officer.

128

No paroling on the battlefield; no paroling of entire bodies of troops after a battle; and no dismissal of large numbers of prisoners, with a general declaration that they are paroled, is permitted, or of any value.

129

In capitulations for the surrender of strong places or fortified camps the commanding officer, in cases of urgent necessity, may agree that the troops under his command shall not fight again during the war, unless exchanged.

130

The usual pledge given in the parole is not to serve during the existing war, unless exchanged.

This pledge refers only to the active service in the field, against the paroling belligerent or his allies actively engaged in the same war. These cases of breaking the parole are patent acts, and can be visited with the punishment of death; but the pledge does not refer to internal service, such as recruiting or drilling the recruits, fortifying places not besieged, quelling civil commotions, fighting against belligerents unconnected with the paroling belligerents, or to civil or diplomatic service for which the paroled officer may be employed.

131

If the government does not approve of the parole, the paroled officer must return into captivity, and should the enemy refuse to receive him, he is free of his parole.

132

A belligerent government may declare, by a general order, whether it will allow paroling, and on what conditions it will allow it. Such order is communicated to the enemy.

133

No prisoner of war can be forced by the hostile government to parole himself, and no government is obliged to parole prisoners of war, or to parole all captured officers, if it paroles any. As the pledging of the parole is an individual act, so is paroling, on the other hand, an act of choice on the part of the belligerent.

134

The commander of an occupying army may require of the civil officers of the enemy, and of its citizens, any pledge he may consider necessary for the safety or security of his army, and upon their failure to give it he may arrest, confine, or detain them.

SECTION VIII

Armistice—Capitulation

135

An armistice is the cessation of active hostilities for a period agreed between belligerents. It must be agreed upon in writing, and duly ratified by the highest authorities of the contending parties.

136

If an armistice be declared, without conditions, it extends no further than to require a total cessation of hostilities along the front of both belligerents.

If conditions be agreed upon, they should be clearly expressed, and must be rigidly adhered to by both parties. If either party violates any express condition, the armistice may be declared null and void by the other.

137

An armistice may be general, and valid for all points and lines of the belligerents; or special, that is, referring to certain troops or certain localities only.

An armistice may be concluded for a definite time; or for an indefinite time, during which either belligerent may resume hostilities on giving the notice agreed upon to the other.

138

The motives which induce the one or the other belligerent to conclude an armistice, whether it be expected to be preliminary to a treaty of peace, or to prepare during the armistice for a more vigorous prosecution of the war, does in no way affect the character of the armistice itself.

139

An armistice is binding upon the belligerents from the day of the agreed commencement; but the officers of the armies are responsible

from the day only when they receive official information of its existence.

140

Commanding officers have the right to conclude armistices binding on the district over which their command extends, but such armistice is subject to the ratification of the superior authority, and ceases so soon as it is made known to the enemy that the armistice is not ratified, even if a certain time for the elapsing between giving notice of cessation and the resumption of hostilities should have been stipulated for.

141

It is incumbent upon the contracting parties of an armistice to stipulate what intercourse of persons or traffic between the inhabitants of the territories occupied by the hostile armies shall be allowed, if any.

If nothing is stipulated the intercourse remains suspended, as during actual hostilities.

142

An armistice is not a partial or a temporary peace; it is only the suspension of military operations to the extent agreed upon by the parties.

143

When an armistice is concluded between a fortified place and the army besieging it, it is agreed by all the authorities on this subject that the besieger must cease all extension, perfection, or advance of his attacking works as much so as from attacks by main force.

But as there is a difference of opinion among martial jurists, whether the besieged have the right to repair breaches or to erect new works of defense within the place during an armistice, this point should be determined by express agreement between the parties.

144

So soon as a capitulation is signed, the capitulator has no right to demolish, destroy, or injure the works, arms, stores, or ammunition, in his possession, during the time which elapses between the signing and the execution of the capitulation, unless otherwise stipulated in the same.

145

When an armistice is clearly broken by one of the parties, the other party is released from all obligation to observe it.

146

Prisoners taken in the act of breaking an armistice must be treated as prisoners of war, the officer alone being responsible who gives the order for such a violation of an armistice. The highest authority of the belligerent aggrieved may demand redress for the infraction of an armistice.

147

Belligerents sometimes conclude an armistice while their plenipotentiaries are met to discuss the conditions of a treaty of peace; but plenipotentiaries may meet without a preliminary armistice; in the latter case, the war is carried on without any abatement.

SECTION IX

Assassination

148

The law of war does not allow proclaiming either an individual belonging to the hostile army, or a citizen, or a subject of the hostile government, an outlaw, who may be slain without trial by any captor, any more than the modern law of peace allows such intentional outlawry; on the contrary, it abhors such outrage. The sternest retaliation should follow the murder committed in consequence of such proclamation, made by whatever authority. Civilized nations look with horror upon offers of rewards for the assassination of enemies as relapses into barbarism.

SECTION X

Insurrection—Civil War—Rebellion

149

Insurrection is the rising of people in arms against their government, or a portion of it, or against one or more of its laws, or against an officer or officers of the government. It may be confined to mere armed resistance, or it may have greater ends in view.

150

Civil war is war between two or more portions of a country or state, each contending for the mastery of the whole, and each claiming to

be the legitimate government. The term is also sometimes applied to war of rebellion, when the rebellious provinces or portion of the state are contiguous to those containing the seat of government.

151

The term "rebellion" is applied to an insurrection of large extent, and is usually a war between the legitimate government of a country and portions of provinces of the same who seek to throw off their allegiance to it and set up a government of their own.

152

When humanity induces the adoption of the rules of regular war toward rebels, whether the adoption is partial or entire, it does in no way whatever imply a partial or complete acknowledgment of their government, if they have set up one, or of them, as an independent and sovereign power. Neutrals have no right to make the adoption of the rules of war by the assailed government toward rebels the ground of their own acknowledgment of the revolted people as an independent power.

153

Treating captured rebels as prisoners of war, exchanging them, concluding of cartels, capitulations, or other warlike agreements with them; addressing officers of a rebel army by the rank they may have in the same; accepting flags of truce; or, on the other hand, proclaiming martial law in their territory, or levying war-taxes or forced loans, or doing any other act sanctioned or demanded by the law and usages of public war between sovereign belligerents, neither proves nor establishes an acknowledgment of the rebellious people, or of the government which they may have erected, as a public or sovereign power. Nor does the adoption of the rules of war toward rebels imply an engagement with them extending beyond the limits of these rules. It is victory in the field that ends the strife and settles the future relations between the contending parties.

154

Treating, in the field, the rebellious enemy according to the law and usages of war has never prevented the legitimate government from trying the leaders of the rebellion or chief rebels for high treason, and from treating them accordingly, unless they are included in a general amnesty.

155

All enemies in regular war are divided into two general classes—that is to say, into combatants and noncombatants, or unarmed citizens of the hostile government.

The military commander of the legitimate government, in a war of rebellion, distinguishes between the loyal citizen in the revolted portion of the country and the disloyal citizen. The disloyal citizens may further be classified into those citizens known to sympathize with the rebellion without positively aiding it, and those who, without taking up arms, give positive aid and comfort to the rebellious enemy without being bodily forced thereto.

156

Common justice and plain expediency require that the military commander protect the manifestly loyal citizens, in revolted territories, against the hardships of the war as much as the common misfortune of all war admits.

The commander will throw the burden of the war, as much as lies within his power, on the disloyal citizens, of the revolted portion or province, subjecting them to a stricter police than the noncombatant enemies have to suffer in regular war; and if he deems it appropriate, or if his government demands of him that every citizen shall, by an oath of allegiance, or by some other manifest act, declare his fidelity to the legitimate government, he may expel, transfer, imprison, or fine the revolted citizens who refuse to pledge themselves anew as citizens obedient to the law and loyal to the government.

Whether it is expedient to do so, and whether reliance can be placed upon such oaths, the commander or his government has the right to decide.

157

Armed or unarmed resistance by citizens of the United States against the lawful movements of their troops is levying war against the United States, and is therefore treason.

APPENDIX II

DECLARATION OF PARIS 1856

The Plenipotentiaries who signed the Treaty of Paris of the thirtieth of March, one thousand eight hundred and fifty-six, assembled in conference,

Considering:

That maritime law in time of war has long been the subject of deplorable disputes;

That the uncertainty of the law and of the duties in such a matter give rise to differences of opinion between neutrals and belligerents which may occasion serious difficulties, and even conflicts; that it is consequently advantageous to establish a uniform doctrine on so important a point;

That the Plenipotentiaries assembled in Congress at Paris cannot better respond to the intentions by which their Governments are animated, than by seeking to introduce into international relations fixed principles, in this respect.

The above-mentioned Plenipotentiaries, being duly authorized, resolved to concert among themselves as to the means of attaining this object; and having come to an agreement, have adopted the following solemn declaration:

1. Privateering is and remains abolished;

2. The neutral flag covers enemy's goods, with the exception of contraband of war;

3. Neutral goods, with the exception of contraband of war, are not liable to capture under enemy's flag;

4. Blockades, in order to be binding, must be effective—that is to say, maintained by a force sufficient really to prevent access to the coast of the enemy.

The Governments of the undersigned Plenipotentiaries engage to bring the present Declaration to the knowledge of the States which

have not taken part in the Congress of Paris, and to invite them to accede to it.

Convinced that the maxims which they now proclaim cannot but be received with gratitude by the whole world, the undersigned Plenipotentiaries doubt not that the efforts of their Governments to obtain the general adoption thereof will be crowned with full success.

The present declaration is not and shall not be binding, except between those Powers who have acceded, or shall accede, to it.

Done at Paris, the sixteenth of April, one thousand eight hundred and fifty-six.

APPENDIX III

CONVENTION FOR THE AMELIORATION OF THE CONDITION OF THE WOUNDED IN ARMIES IN THE FIELD. GENEVA, JULY 6, 1906

(Names of thirty-five States)

Being equally animated by the desire to lessen the inherent evils of warfare as far as is within their power, and wishing for this purpose to improve and supplement the provisions agreed upon at Geneva on August 22, 1864, for the amelioration of the condition of the wounded in armies in the field,

Have decided to conclude a new convention to that effect, and have appointed as their plenipotentiaries, to wit:

(Names of delegates)

Who, after having communicated to each other their full powers, found in good and due form, have agreed on the following:

(Translation)

CHAPTER I

THE SICK AND WOUNDED

ARTICLE 1. Officers, soldiers, and other persons officially attached to armies who are sick or wounded shall be respected and cared for, without distinction of nationality, by the belligerent in whose power they are.

A belligerent, however, when compelled to leave his wounded in the hands of his adversary, shall leave with them, so far as military conditions permit, a portion of the personnel and matériel of his sanitary service to assist in caring for them.

ART. 2. Subject to the care that must be taken of them under the preceding article, the sick and wounded of an Army who fall into the power of the other belligerent become prisoners of war, and the general rules of international law in respect to prisoners become applicable to them.

The belligerents remain free, however, to mutually agree upon such clauses, by way of exception or favor, in regard to sick and wounded prisoners as they may deem proper. They shall have authority to agree:

1. To mutually return the sick and wounded left on the field of battle after an engagement.

2. To send back to their own country the sick and wounded who have recovered, or who are in a condition to be transported, and whom they do not desire to retain as prisoners.

3. To send the sick and wounded of the enemy to a neutral state, with its consent and on condition that it shall charge itself with their internment until the close of hostilities.

ART. 3. After every engagement the belligerent who remains in possession of the field of battle shall take measures to search for the wounded and to protect the wounded and dead from spoliation and ill treatment.

He will see that a careful examination is made of the bodies of the dead prior to their interment or incineration.

ART. 4. As soon as possible each belligerent shall forward to the authorities of their country or Army the military tokens, or badges of identification, found upon the bodies of the dead, together with a list of the sick and wounded taken in charge by him.

Belligerents will keep each other mutually advised of interments and transfers, together with admissions to hospitals and deaths which occur among the sick and wounded in their hands. They will collect all personal belongings, valuables, letters, etc., which are found upon the field of battle, or have been left by the sick or wounded, or by those who have died in sanitary formations or other establishments, for transmission to interested persons through the authorities of their own country.

ART. 5. Military authority may make an appeal to the charitable zeal of the inhabitants to receive and, under his supervision, to care for the sick and wounded of the armies, by granting to persons responding to such appeals special protection and certain immunities.

CHAPTER II

SANITARY FORMATIONS AND ESTABLISHMENTS

ART. 6. Movable sanitary formations (*i. e.*, those which are intended to accompany armies in the field) and the fixed establishments belonging to the sanitary service shall be protected and respected by belligerents.

ART. 7. The protection due to sanitary formations and establishments ceases if they are used to commit acts injurious to the enemy.

ART. 8. A sanitary formation or establishment shall not be deprived of the protection accorded by article 6 by the fact that:

1. The personnel of a formation or establishment is armed and uses its arms in self-defense or in defense of its sick and wounded.

2. In the absence of armed hospital attendants, the formation is guarded by an armed detachment or by sentinels regularly established.

3. Arms or cartridges, taken from the wounded and not yet turned over to the proper authorities, are found in the formation or establishment.

CHAPTER III

PERSONNEL

ART. 9. The personnel exclusively charged with the removal, transportation, and treatment of the sick and wounded, as well as with the administration of sanitary formations and establishments, and the chaplains attached to armies shall be respected and protected under all circumstances. If they fall into the hands of the enemy they shall not be regarded as prisoners of war.

These provisions apply to the personnel of the guard of sanitary formations and establishments in the case provided for in section 2 of article 8.

ART. 10. The personnel of volunteer aid societies, duly recognized and authorized by their respective governments, who are employed in the sanitary formations and establishments of armies, are assimilated to the personnel contemplated in the preceding article, upon condition that the said personnel shall be subject to military laws and regulations.

Each state shall make known to the other either in time of peace or at the opening or during the progress of hostilities—in any case,

before actual employment—the names of the societies which it has authorized to render assistance, under its responsibility, in the official sanitary service of its armies.

Art. 11. A recognized society of a neutral state cannot lend the services of its sanitary personnel and formations to a belligerent except with the prior consent of its own government and the authority of such belligerent. The belligerent who has accepted such assistance is required to notify the enemy before making any use thereof.

Art. 12. Persons described in articles 9, 10, and 11 will continue in the exercise of their functions after they have fallen into the power of the enemy and under his direction.

When their co-operation is no longer indispensable they will be sent back to their army or country, within such period and by such route as may accord with military necessity.

They will carry with them such effects, instruments, arms, and horses as are their private property.

Art. 13. While they remain in his power, the enemy will secure to the personnel mentioned in article 9 the same pay and allowances to which persons of the same grade in his own Army are entitled.

CHAPTER IV

MATÉRIEL

Art. 14. Mobile sanitary formations that have fallen into the power of the enemy shall retain their matériel and means of transportation of whatever kind, including teams, whatever may be the means of transportation, and the conducting personnel.

Competent military authority, however, shall have the right to employ them in caring for the sick and wounded. The restitution of the matériel shall take place in accordance with the conditions prescribed for the sanitary personnel, and, as far as possible, at the same time.

Art. 15. Buildings and matériel pertaining to fixed establishments shall remain subject to the laws of war, but cannot be diverted from their use so long as they are necessary for the sick and wounded, Commanders of troops engaged in operations, however, may use them. in case of important military necessity, if before such use, the sick and wounded who are in them have been provided for.

Art. 16. The matériel of aid societies, admitted to the benefits of

this convention in conformity to the conditions herein prescribed, is regarded as private property and, as such, will be respected under all circumstances, save that it is subject to the right of requisition by belligerents in conformity to the laws and usages of war.

CHAPTER V

CONVOYS OF EVACUATION

ART. 17. Convoys of evacuation shall be treated as movable sanitary formations with the following exceptions:

1. A belligerent intercepting a convoy may, if required by military necessity, break up such convoy by charging himself with the care of the sick and wounded whom it contains.

2. In this case the obligation to restore the sanitary personnel, as provided for in article 12, shall be extended to include the entire military personnel employed, under proper authority, in the transportation and protection of the convoy.

The obligation to return the sanitary matériel as provided for in article 14 shall apply to railway trains and vessels intended for interior navigation which have been especially equipped for evacuation purposes, together with the equipment of such vehicles, trains, and vessels which belong to the sanitary service.

Military vehicles, with their teams, other than those belonging to the sanitary service, may be captured.

Civilians and various means of transportation obtained by requisition, including railway matériel and vessels utilized for convoys, are subject to the general rules of international law.

CHAPTER VI

DISTINCTIVE EMBLEM

ART. 18. In homage to Switzerland the heraldic sign of the red cross on a white ground, formed by the reversal of the federal colors, is continued as the emblem and distinctive sign of the sanitary service of armies.

ART. 19. This emblem appears on flags and brassards as well as upon all matériel appertaining to the sanitary service, with the permission of competent military authority.

ART. 20. The personnel protected by the provisions of paragraph 1, article 9, and articles 10 and 11 will wear attached to the left arm a brassard bearing a red cross on a white ground, which will be issued and stamped by competent military authority, and accompanied by a certificate of identity in the case of persons attached to the sanitary service of armies who do not have military uniform.

ART. 21. The distinctive flag of the convention can only be displayed, with the consent of the military authorities over sanitary formations and establishments which the convention provides shall be respected, and with the consent of the military authorities. It shall be accompanied by the national flag of the belligerent to whose service the formation or establishment is attached.

Sanitary formations which have fallen into the power of the enemy, however, shall fly no other flag than that of the Red Cross so long as they continue in that situation.

ART. 22. Neutral sanitary formations which, under the conditions set forth in article 11, have been authorized to render their services shall fly, with the flag of the convention, the national flag of the belligerent to which they are attached. The provisions of the second paragraph of the preceding article are applicable to them.

ART. 23. The emblem of the red cross on a white ground and the words *Red Cross* or *Geneva Cross* may only be used, whether in time of peace or war, to protect or designate sanitary formations and establishments, the personnel and matériel protected by the convention.

CHAPTER VII

APPLICATION AND EXECUTION OF THE CONVENTION

ART. 24. The provisions of the present convention are obligatory on the contracting powers only, in case of war between two or more of them. The said provisions shall cease to be obligatory from the time when one of the belligerent powers should not be signatory to the convention.

ART. 25. The commanders in chief of the belligerent armies shall have to provide for the details of execution of the foregoing articles, as well as for unforeseen cases, in accordance with the instructions of their respective governments, and conformably to the general principles of this convention.

ART. 26. The signatory governments shall take the necessary steps to

acquaint their troops, and particularly the protected personnel, with the provisions of this convention and to make them known to the people at large.

CHAPTER VIII

REPRESSION OF ABUSES AND INFRACTIONS

ART. 27. The signatory powers whose legislation should not now be adequate engage to take or recommend to their legislatures such measures as may be necessary to prevent the use, by private persons or by societies other than those upon which this convention confers the right thereto, of the emblem or name of the Red Cross or Geneva Cross, particularly for commercial purposes by means of trade marks or commercial labels.

The prohibition of the use of the emblem or name in question shall take effect from the time set by each act of legislation and not later than five years after this convention goes into effect. Upon the said going into effect, it shall be unlawful to use a trade mark or commercial label contrary to such prohibition.

ART. 28. In the event of their military penal laws being insufficient, the signatory governments also engage to take, or to recommend to their legislatures, the necessary measures to repress, in time of war, individual acts of pillage and ill treatment of the sick and wounded of the armies, as well as to punish, as usurpations of military insignia, the wrongful use of the flag and brassard of the Red Cross by military persons or private individuals not protected by the present convention.

They will communicate to each other through the Swiss Federal Council the measures taken with a view to such repression, not later than five years from the ratification of the present convention.

GENERAL PROVISIONS

ART. 29. The present convention shall be ratified as soon as possible. The ratifications will be deposited at Berne.

A record of the deposit of each act of ratification shall be prepared, of which a duly certified copy shall be sent, through diplomatic channels, to each of the contracting powers.

ART. 30. The present convention shall become operative, as to each power, six months after the date of deposit of its ratification.

ART. 31. The present convention, when duly ratified, shall supersede

the Convention of August 22, 1864, in the relations between the contracting states.

The Convention of 1864 remains in force in the relations between the parties who signed it but who should not also ratify the present convention.

ART. 32. The present convention may, until December 31, proximo, be signed by the powers represented at the conference which opened at Geneva on June 11, 1906, as well as by the powers not represented at the conference who have signed the Convention of 1864.

Such of the powers as shall not have signed the present convention on or before December 31, 1906, will remain at liberty to accede to it after that date. They shall signify their adhesion in a written notification addressed to the Swiss Federal Council, and communicated to all the contracting powers by the said Council.

Other powers may request to adhere in the same manner, but their request shall only be effective if, within the period of one year from its notification to the Federal Council, such Council has not been advised of any opposition on the part of any of the contracting powers.

ART. 33. Each of the contracting parties shall have the right to denounce the present convention. This denunciation shall only become operative one year after a notification in writing shall have been made to the Swiss Federal Council, which shall forthwith communicate such notification to all the other contracting parties.

This denunciation shall only become operative in respect to the power which has given it.

In faith whereof the plenipotentiaries have signed the present convention and affixed their seals thereto.

Done at Geneva, the sixth day of July, one thousand nine hundred and six, in a single copy, which shall remain in the archives of the Swiss Confederation and certified copies of which shall be delivered through the diplomatic channel to the contracting parties.

[Here follow the signatures.]

APPENDIX IV

CONVENTION (I) FOR THE PACIFIC SETTLEMENT OF INTERNATIONAL DISPUTES

His Majesty the German Emperor, King of Prussia; the President of the United States of America; the President of the Argentine Republic; His Majesty the Emperor of Austria, King of Bohemia, etc., and Apostolic King of Hungary; His Majesty the King of the Belgians; the President of the Republic of Bolivia; the President of the Republic of the United States of Brazil; His Royal Highness the Prince of Bulgaria; the President of the Republic of Chile; His Majesty the Emperor of China; the President of the Republic of Colombia; the Provisional Governor of the Republic of Cuba; His Majesty the King of Denmark; the President of the Dominican Republic; the President of the Republic of Ecuador; His Majesty the King of Spain; the President of the French Republic; His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India; His Majesty the King of the Hellenes; the President of the Republic of Guatemala; the President of the Republic of Haïti; His Majesty the King of Italy; His Majesty the Emperor of Japan; His Royal Highness the Grand Duke of Luxemburg, Duke of Nassau; the President of the United States of Mexico; His Royal Highness the Prince of Montenegro; the President of the Republic of Nicaragua; His Majesty the King of Norway; the President of the Republic of Panamá; the President of the Republic of Paraguay; Her Majesty the Queen of the Netherlands; the President of the Republic of Peru; His Imperial Majesty the Shah of Persia; His Majesty the King of Portugal and of the Algarves, etc.; His Majesty the King of Roumania; His Majesty the Emperor of All the Russias; the President of the Republic of Salvador; His Majesty the King of Servia; His Majesty the King of Siam; His Majesty the King of Sweden; the Swiss Federal Council; His Majesty the Emperor of the

Ottomans; the President of the Oriental Republic of Uruguay; the President of the United States of Venezuela:

Animated by the sincere desire to work for the maintenance of the general peace;

Resolved to promote by all the efforts in their power the friendly settlement of international disputes;

Recognizing the solidarity which unites the members of the society of civilized nations;

Desirous of extending the empire of law, and of strengthening the appreciation of international justice;

Convinced that the permanent institution of a Tribunal of Arbitration, accessible to all, in the midst of the independent Powers, will contribute effectively to this result;

Having regard to the advantages attending the general and regular organization of the procedure of arbitration;

Sharing the opinion of the august Initiator of the International Peace Conference that it is expedient to record in an international Agreement the principles of equity and right on which are based the security of States and the welfare of peoples;

Being desirous, with this object, of insuring the better working in practice of Commissions of Inquiry and Tribunals of Arbitration, and of facilitating recourse to arbitration in cases which allow of a summary procedure;

Have deemed it necessary to revise in certain particulars and to complete the work of the First Peace Conference for the pacific settlement of international disputes;

The High Contracting Parties have resolved to conclude a new Convention for this purpose, and have appointed the following as their Plenipotentiaries:

[Names of Plenipotentiaries.]

Who, after having deposited their full powers, found in good and due form, have agreed upon the following:

Title I.—On the Maintenance of the General Peace

Article 1. With a view to obviating, as far as possible, recourse to force in the relations between States, the Contracting Powers agree to use their best efforts to insure the pacific settlement of international differences.

Title II.—On Good Offices and Mediation

Art. 2. In case of serious disagreement or dispute, before an appeal to arms, the Contracting Powers agree to have recourse, as far as circumstances allow, to the good offices or mediation of one or more friendly Powers.

Art. 3. Independently of this recourse, the Contracting Powers deem it expedient and desirable that one or more Powers, strangers to the dispute, should, on their own initiative, and as far as circumstances may allow, offer their good offices or mediation to the States at variance.

Powers, strangers to the dispute, have the right to offer good offices or mediation, even during the course of hostilities.

The exercise of this right can never be regarded by one or the other of the parties in conflict as an unfriendly act.

Art. 4. The part of the mediator consists in reconciling the opposing claims and appeasing the feelings of resentment which may have arisen between the States at variance.

Art. 5. The functions of the mediator are at an end when once it is declared, either by one of the parties to the dispute, or by the mediator himself, that the means of reconciliation proposed by him are not accepted.

Art. 6. Good offices and mediation, either at the request of the parties at variance, or on the initiative of Powers strangers to the dispute, have exclusively the character of advice and never having binding force.

Art. 7. The acceptance of mediation cannot, unless there be an agreement to the contrary, have the effect of interrupting, delaying, or hindering mobilization or other measures of preparation for war.

If mediation occurs after the commencement of hostilities, it causes no interruption to the military operations in progress, unless there be an agreement to the contrary.

Art. 8. The Contracting Powers are agreed in recommending the application, when circumstances allow, of special mediation in the following form:

In case of a serious difference endangering the peace, the States at variance choose respectively a Power, to whom they intrust the mission of entering into direct communication with the Power chosen on the other side, with the object of preventing the rupture of pacific relations.

For the period of this mandate, the term of which, unless otherwise stipulated, cannot exceed thirty days, the States in conflict cease from all direct communication on the subject of the dispute, which is regarded as referred exclusively to the mediating Powers, who must use their best efforts to settle it.

In case of a definite rupture of pacific relations, these Powers are charged with the joint task of taking advantage of any opportunity to restore peace.

Title III.—On International Commissions of Inquiry

Art. 9. In differences of an international nature involving neither honor nor vital interests, and arising from a difference of opinion on points of fact, the Contracting Powers deem it expedient and desirable that the parties, who have not been able to come to an agreement by means of diplomacy, should as far as circumstances allow, institute an International Commission of Inquiry, to facilitate a solution of these differences by elucidating the facts by means of an impartial and conscientious investigation.

Art. 10. The International Commissions of Inquiry are constituted by special agreement between the parties in conflict.

The Inquiry Convention defines the facts to be examined; it determines the mode and time in which the Commission is to be formed and the extent of the Commissioners' powers.

It also determines, if there is need, where the Commission is to sit, and whether it may remove to another place, the language the Commission shall use and the languages the use of which shall be authorized before it, as well as the date on which each party must deposit its statement of facts, and, generally speaking, all the conditions upon which the parties have agreed.

If the parties consider it necessary to appoint Assessors, the Inquiry Convention shall determine the mode of their selection and the extent of their powers.

Art. 11. If the Inquiry Convention has not determined where the Commission is to sit, it will sit at The Hague.

The place of meeting, once fixed, cannot be altered by the Commission except with the assent of the parties.

If the Inquiry Convention has not determined what languages are to be employed, the question shall be decided by the Commission.

Art. 12. Unless an undertaking is made to the contrary, Com-

missions of Inquiry shall be formed in the manner determined by Articles 45 and 57 of the present Convention.

ART. 13. Should one of the Commissioners or one of the Assessors, should there be any, either die, or resign, or be unable for any reason whatever to discharge his functions, the same procedure is followed for filling the vacancy as was followed for appointing him.

ART. 14. The parties are entitled to appoint special agents to attend the Commission of Inquiry, whose duty it is to represent them and to act as intermediaries between them and the Commission.

They are further authorized to engage counsel or advocates, appointed by themselves, to state their case and uphold their interests before the Commission.

ART. 15. The International Bureau of the Permanent Court of Arbitration acts as registry for the Commissions which sit at The Hague, and it shall place its offices and staff at the disposal of the Contracting Powers for the use of the Commission of Inquiry.

ART. 16. If the Commission meets elsewhere than at The Hague, it appoints a Secretary-General, whose office serves as registry.

It is the function of the registry, under the control of the President, to make the necessary arrangements for the sittings of the Commission, the preparation of the Minutes, and, while the inquiry lasts, for the charge of the archives, which shall subsequently be transferred to the International Bureau at The Hague.

ART. 17. In order to facilitate the constitution and working of Commissions of Inquiry, the Contracting Powers recommend the following rules, which shall be applicable to the inquiry procedure in so far as the parties do not adopt other rules.

ART. 18. The Commission shall settle the details of the procedure not covered by the special Inquiry Convention or the present Convention, and shall arrange all the formalities required for dealing with the evidence.

ART. 19. On the inquiry both sides must be heard.

At the dates fixed, each party communicates to the Commission and to the other party the statements of facts, if any, and, in all cases, the instruments, papers, and documents which it considers useful for ascertaining the truth, as well as the list of witnesses and experts whose evidence it wishes to be heard.

ART. 20. The Commission is entitled, with the assent of the Powers, to move temporarily to any place where it considers it may be useful to have recourse to this means of inquiry or to send one or

more of its members. Permission must be obtained from the State on whose territory it is proposed to hold the inquiry.

ART. 21. Every investigation, and every examination of a locality, must be made in the presence of the agents and counsel of the parties or after they have been duly summoned.

ART. 22. The Commission is entitled to ask from either party for such explanations and information as it considers necessary.

ART. 23. The parties undertake to supply the Commission of Inquiry, as fully as they may think possible, with all means and facilities necessary to enable it to become completely acquainted with, and to accurately understand, the facts in question.

They undertake to make use of the means at their disposal, under their municipal law, to insure the appearance of the witnesses or experts who are in their territory and have been summoned before the Commission.

If the witnesses or experts are unable to appear before the Commission, the parties will arrange for their evidence to be taken before the qualified officials of their own country.

ART. 24. For all notices to be served by the Commission in the territory of a third Contracting Power, the Commission shall apply direct to the Government of the said Power. The same rule applies in the case of steps being taken on the spot to procure evidence.

The requests for this purpose are to be executed so far as the means at the disposal of the Power applied to under its municipal law allow. They cannot be rejected unless the Power in question considers they are calculated to impair its sovereign rights or its safety.

The Commission will equally be always entitled to act through the Power on whose territory it sits.

ART. 25. The witnesses and experts are summoned on the request of the parties or by the Commission of its own motion, and, in every case, through the Government of the State in whose territory they are.

The witnesses are heard in succession and separately, in the presence of the agents and counsel, and in the order fixed by the Commission.

ART. 26. The examination of witnesses is conducted by the President.

The members of the Commission may however put to each witness questions which they consider likely to throw light on and complete his evidence, or get information on any point concerning

the witness within the limits of what is necessary in order to get at the truth.

The agents and counsel of the parties may not interrupt the witness when he is making his statement; nor put any direct question to him, but they may ask the President to put such additional questions to the witness as they think expedient.

ART. 27. The witness must give his evidence without being allowed to read any written draft. He may, however, be permitted by the President to consult notes or documents if the nature of the facts referred to necessitates their employment.

ART. 28. A Minute of the evidence of the witness is drawn up forthwith and read to the witness. The latter may make such alterations and additions as he thinks necessary, which will be recorded at the end of his statement.

When the whole of his statement has been read to the witness, he is required to sign it.

ART. 29. The agents are authorized, in the course of or at the close of the inquiry, to present in writing to the Commission and to the other party such statements, requisitions, or summaries of the facts as they consider useful for ascertaining the truth.

ART. 30. The Commission considers its decisions in private and the proceedings are secret.

All questions are decided by a majority of the members of the Commission.

If a member declines to vote, the fact must be recorded in the Minutes.

ART. 31. The sittings of the Commission are not public, nor the Minutes and documents connected with the inquiry published except in virtue of a decision of the Commission taken with the consent of the parties.

ART. 32. After the parties have presented all the explanations and evidence, and the witnesses have all been heard, the President declares the inquiry terminated, and the Commission adjourns to deliberate and to draw up its Report.

ART. 33. The Report is signed by all the members of the Commission.

If one of the members refuses to sign, the fact is mentioned; but the validity of the Report is not affected.

ART. 34. The Report of the Commission is read at a public sitting, the agents and counsel of the parties being present or duly summoned.

A copy of the Report is given to each party.

ART. 35. The Report of the Commission is limited to a statement of facts, and has in no way the character of an Award. It leaves to the parties entire freedom as to the effect to be given to the statement.

ART. 36. Each party pays its own expenses and an equal share of the expenses incurred by the Commission.

TITLE IV.—ON INTERNATIONAL ARBITRATION

CHAPTER I. *On the System of Arbitration*

ART. 37. International arbitration has for its object the settlement of disputes between States by judges of their own choice, and on the basis of respect for law.

Recourse to arbitration implies an engagement to submit in good faith to the Award.

ART. 38. In questions of a legal nature, and especially in the interpretation or application of International Conventions, arbitration is recognized by the Contracting Powers as the most effective, and at the same time the most equitable, means of settling disputes which diplomacy has failed to settle.

Consequently, it would be desirable that, in disputes about the above-mentioned questions, the Contracting Powers should, if the case arose, have recourse to arbitration, in so far as circumstances permit.

ART. 39. The Arbitration Convention is concluded for questions already existing or for questions which may arise eventually.

It may embrace any dispute or only disputes of a certain category.

ART. 40. Independently of general or private Treaties expressly stipulating recourse to arbitration as obligatory on the Contracting Powers, the said Powers reserve to themselves the right of concluding new Agreements, general or private, with a view to extending obligatory arbitration to all cases which they may consider it possible to submit to it.

CHAPTER II. *On the Permanent Court of Arbitration*

ART. 41. With the object of facilitating an immediate recourse to arbitration for international differences, which it has not been possible to settle by diplomacy, the Contracting Powers undertake to maintain the permanent Court of Arbitration, established by the First

Peace Conference accessible at all times and operating, unless otherwise stipulated by the parties, in accordance with the Rules of Procedure inserted in the present Convention.

ART. 42. The Permanent Court is competent for all arbitration cases, unless the parties agree to institute a special Tribunal.

ART. 43. The Permanent Court sits at The Hague. An International Bureau serves as registry for the Court. It is the channel for communications relative to the meetings of the Court; it has the custody of the archives and conducts all the administrative business.

The Contracting Powers undertake to communicate to the Bureau as soon as possible a certified copy of any conditions of arbitration arrived at between them, and of any award concerning them delivered by a special Tribunal.

They undertake likewise to communicate to the Bureau the laws, regulations, and documents eventually showing the execution of the awards given by the Court.

ART. 44. Each Contracting Power shall select four persons at the most, of known competency in questions of international law, of the highest moral reputation, and disposed to accept the duties of Arbitrators.

The persons thus selected are inscribed, as members of the Court, in a list which shall be notified by the Bureau to all the Contracting Powers.

Any alteration in the list of Arbitrators is brought by the Bureau to the knowledge of the Contracting Powers.

Two or more Powers may agree on the selection in common of one or more Members.

The same person may be selected by different Powers.

The Members of the Court are appointed for a term of six years. Their appointments can be renewed.

In case of the death or retirement of a member of the Court, his place shall be filled in accordance with the method of his appointment. In this case the appointment is made for a fresh period of six years.

ART. 45. When the Contracting Powers desire to have recourse to the Permanent Court for the settlement of a difference that has arisen between them, the Arbitrators called upon to form the Tribunal with jurisdiction to decide this difference, must be chosen from the general list of members of the Court.

Failing the direct agreement of the parties on the composition of the Arbitration Tribunal, the following course shall be pursued:

Each party appoints two Arbitrators, of whom one only can be its national or chosen from among the persons selected by it as members of the Permanent Court. These Arbitrators together choose an Umpire.

If the votes are equally divided, the choice of the Umpire is intrusted to a third Power, selected by the parties by common accord.

If an agreement is not arrived at on this subject, each party selects a different Power, and the choice of the Umpire is made in concert by the Powers thus selected.

If, within two months' time, these two Powers cannot come to an agreement, each of them presents two candidates taken from the list of members of the Permanent Court, exclusive of the members selected by the parties and not being nationals of either of them. Drawing lots determines which of the candidates thus presented shall be Umpire.

ART. 46. As soon as the Tribunal has been constituted, the parties notify to the Bureau their determination to have recourse to the Court, the text of their "Compromis," and the names of the Arbitrators.

The Bureau communicates without delay to each Arbitrator the "Compromis," and the names of the other members of the Tribunal.

The Tribunal assembles on the date fixed by the parties. The Bureau makes the necessary arrangements for the meeting.

The Members of the Tribunal, in the discharge of their duties and out of their own country, enjoy diplomatic privileges and immunities.

ART. 47. The Bureau is authorized to place its offices and staff at the disposal of the Contracting Powers for the use of any special Board of Arbitration.

The jurisdiction of the Permanent Court may, within the conditions laid down in the Regulations, be extended to disputes between non-Contracting Powers, or between Contracting Powers and non-Contracting Powers, if the Parties are agreed on recourse to this Tribunal.

ART. 48. The Contracting Powers consider it their duty, if a serious dispute threatens to break out between two or more of them, to remind these latter that the Permanent Court is open to them.

Consequently, they declare that the fact of reminding the parties at variance of the provisions of the present Convention, and the advice given to them, in the highest interests of peace, to have recourse to the Permanent Court, can only be regarded as friendly actions.

In case of dispute between two Powers, one of them can always

address to the International Bureau a note containing a declaration that it would be ready to submit the dispute to arbitration.

The Bureau must at once inform the other Power of the declaration.

ART. 49. The Permanent Administrative Council, composed of the Diplomatic Representatives of the Contracting Powers accredited to The Hague and of the Netherland Minister for Foreign Affairs, who acts as President, is charged with the direction and control of the International Bureau.

The Council settles its Rules of Procedure and all other necessary Regulations.

It decides all questions of administration which may arise with regard to the operations of the Court.

It has entire control over the appointment, suspension or dismissal of the officials and employés of the Bureau.

It fixes the payments and salaries, and controls the general expenditure.

At meetings duly summoned the presence of nine members is sufficient to render valid the discussions of the Council. The decisions are taken by a majority of votes.

The Council communicates to the Contracting Powers without delay the Regulations adopted by it. It furnishes them with an annual Report on the labors of the Court, the working of the administration, and the expenses. The Report likewise contains a résumé of what is important in the documents communicated to the Bureau by the Powers in virtue of Article 43, paragraphs 3 and 4.

ART. 50. The expenses of the Bureau shall be borne by the Contracting Powers in the proportion fixed for the International Bureau of the Universal Postal Union.

The expenses to be charged to the adhering Powers shall be reckoned from the date on which their adhesion comes into force.

CHAPTER III. *On Arbitral Procedure*

ART. 51. With a view to encourage the development of arbitration, the Contracting Powers have agreed on the following Rules which shall be applicable to arbitral procedure, unless other rules have been agreed on by the parties.

ART. 52. The Powers which have recourse to arbitration sign a "Compromis," in which the subject of the dispute is clearly defined, the time allowed for appointing Arbitrators, the form, order, and time

in which the communication referred to in Article 63 must be made and the amount of the sum which each party must deposit in advance to defray the expenses.

The "Compromis" likewise defines, if there is occasion, the manner of appointing Arbitrators, any special powers which may eventually belong to the Tribunal, where it shall meet, the language it shall use, and the languages the employment of which shall be authorized before it, and, generally speaking, all the conditions on which the parties are agreed.

ART. 53. The Permanent Court is competent to settle the "Compromis," if the parties are agreed to have recourse to it for the purpose.

It is similarly competent, even if the request is only made by one of the parties, when all attempts to reach an understanding through the diplomatic channel have failed, in the case of:

1. A dispute covered by a general Treaty of Arbitration concluded or renewed after the present Convention has come into force, and providing for a "Compromis" in all disputes and not either explicitly or implicitly excluding the settlement of the "Compromis" from the competence of the Court. Recourse cannot, however, be had to the Court if the other party declares that in its opinion the dispute does not belong to the category of disputes which can be submitted to compulsory arbitration, unless the Treaty of Arbitration confers upon the Arbitration Tribunal the power of deciding this preliminary question.

2. A dispute arising from contract debts claimed from one Power by another Power as due to its nationals, and for the settlement of which the offer of arbitration has been accepted. This arrangement is not applicable if acceptance is subject to the condition that the "Compromis" should be settled in some other way.

ART. 54. In the cases contemplated in the preceding Article, the "Compromis" shall be settled by a Commission consisting of five members selected in the manner arranged for in Article 45, paragraphs 3 to 6.

The fifth member is President of the Commission *ex officio*.

ART. 55. The duties of Arbitrator may be conferred on one Arbitrator alone or on several Arbitrators selected by the parties as they please, or chosen by them from the members of the Permanent Court of Arbitration established by the present Convention.

Failing the constitution of the Tribunal by direct agreement between the parties, the course referred to in Article 45, paragraphs 3 to 6, is followed.

ART. 56. When a Sovereign or the Chief of a State is chosen as Arbitrator, the arbitral procedure is settled by him.

ART. 57. The Umpire is President of the Tribunal *ex officio*.

When the Tribunal does not include an Umpire, it appoints its own President.

ART. 58. When the "Compromis" is settled by a Commission, as contemplated in Article 54, and in the absence of an agreement to the contrary, the Commission itself shall form the Arbitration Tribunal.

ART. 59. In case of the death, retirement, or disability from any cause of one of the Arbitrators, his place shall be filled in accordance with the method of his appointment.

ART. 60. The Tribunal sits at The Hague, unless some other place is selected by the parties.

The Tribunal may only sit in the territory of a third Power with the latter's consent.

The place of meeting once fixed cannot be altered by the Tribunal, except with the consent of the parties.

ART. 61. If the "Compromis" has not determined what languages are to be used, it shall be decided by the Tribunal.

ART. 62. The parties are entitled to appoint special agents to attend the Tribunal, for the purpose of serving as intermediaries between themselves and the Tribunal.

They are further authorized to retain, for the defense of their rights and interests before the Tribunal, counsel or advocates appointed by them for this purpose.

The members of the Permanent Court may not act as agents, counsel, or advocates except on behalf of the Power which appointed them members of the Court.

ART. 63. As a general rule the arbitral procedure comprises two distinct phases: written pleadings and oral discussions.

The pleadings consist in the communication by the respective agents to the members of the Tribunal and the opposing party, of cases, counter-cases, and, if necessary, of replies; the parties annex thereto all papers and documents relied on in the case. This communication shall be made either directly or through the intermediary of the International Bureau, in the order and within the time fixed by the "Compromis."

The time fixed by the "Compromis" may be extended by mutual agreement by the parties, or by the Tribunal when the latter considers it necessary for the purpose of reaching a just decision.

Discussion consists in the oral development before the Tribunal of the arguments of the parties.

ART. 64. A duly certified copy of every document produced by one party must be communicated to the other party.

ART. 65. Unless special circumstances arise, the Tribunal does not meet until the pleadings are closed.

ART. 66. The discussions are under the control of the President.

They are only public if it be so decided by the Tribunal, with the assent of the parties.

They are recorded in minutes drawn up by the Secretaries appointed by the President. These minutes are signed by the President and by one of the Secretaries and alone have an authentic character.

ART. 67. After the close of the pleadings, the Tribunal has the right to refuse discussion of all new papers or documents which one party may desire to submit to it without the consent of the other party.

ART. 68. The Tribunal is free to take into consideration new papers or documents to which its attention may be drawn by the agents or counsel of the parties.

In this case, the Tribunal has the right to require the production of these Acts or documents, but is obliged to make them known to the opposite party.

ART. 69. The Tribunal may, besides, require from the agents of the parties the production of all papers, and can demand all necessary explanations. In case of refusal, the Tribunal takes note of it.

ART. 70. The agents and the counsel of the parties are authorized to present orally to the Tribunal all the arguments they may think expedient in defense of their case.

ART. 71. They are entitled to raise objections and points. The decisions of the Tribunal on those points are final, and cannot form the subject of any subsequent discussion.

ART. 72. The members of the Tribunal are entitled to put questions to the agents and counsel of the parties, and to demand explanations from them on doubtful points.

Neither the questions put nor the remarks made by members of the Tribunal during the discussions can be regarded as an expression of opinion by the Tribunal in general, or by its members in particular.

ART. 73. The Tribunal is authorized to declare its competence in interpreting the "Compromis" as well as the other acts and docu-

ments which may be invoked in the case, and in applying the principles of law.

ART. 74. The Tribunal is entitled to issue Rules of Procedure for the conduct of the case, to decide the forms, order and time in which each party must conclude its arguments, and to arrange all the formalities required for dealing with the evidence.

ART. 75. The parties undertake to supply the Tribunal, as fully as they consider possible, with all the information required for deciding the case.

ART. 76. For all notices which the Tribunal has to serve in the territory of a third Contracting Power, the Tribunal shall apply direct to the Government of that Power. The same rule applies in the case of steps being taken to procure evidence on the spot.

The requests for this purpose are to be executed as far as the means at the disposal of the Power applied to under its municipal law allow. They cannot be rejected unless the Power in question considers them calculated to impair its own sovereign rights or its safety.

The Tribunal will equally be always entitled to act through the Power on whose territory it sits.

ART. 77. When the agents and counsel of the parties have submitted all explanations and evidence in support of their case, the President pronounces the discussion closed.

ART. 78. The deliberations of the Tribunal take place in private and the proceedings remain secret. Every decision is taken by a majority of members of the Tribunal.

ART. 79. The award is accompanied by a statement of reasons. It contains the names of the Arbitrators; it is signed by the President and Registrar or by the Secretary acting as Registrar.

ART. 80. The award is read out at a public meeting of the Tribunal, the agents and counsel of the parties being present, or duly summoned to attend.

ART. 81. The award, duly pronounced and notified to the agents of the parties, puts an end to the dispute definitely and without appeal.

ART. 82. Any dispute arising between the parties as to the interpretation and execution of the Award shall, in the absence of an agreement to the contrary, be submitted to the Tribunal which pronounced it.

ART. 83. The parties may reserve in the "Compromis" the right to demand the revision of the award.

In this case, and unless there be an agreement to the contrary, the demand must be addressed to the Tribunal which pronounced the award. It can only be made on the ground of the discovery of some new fact calculated to exercise a decisive influence on the award, and which, at the time the discussion was closed, was unknown to the Tribunal and to the party demanding the revision.

Proceedings for revision can only be instituted by a decision of the Tribunal expressly recording the existence of the new fact, recognizing in it the character described in the foregoing paragraph, and declaring the demand admissible on this ground.

The "Compromis" fixes the period within which the demand for revision must be made.

ART. 84. The award is not binding except on the parties in dispute.

When there is a question of interpreting a Convention to which Powers other than those concerned in the dispute are parties, they shall inform all the Signatory Powers in good time. Each of these Powers has the right to intervene in the case. If one or more of them avail themselves of this right, the interpretation contained in the award is equally binding on them.

ART. 85. Each party pays its own expenses and an equal share of those of the Tribunal.

CHAPTER IV. *Arbitration by Summary Procedure*

ART. 86. With a view to facilitating the working of the system of arbitration in disputes admitting of a summary procedure, the Contracting Powers adopt the following rules, which shall be observed in the absence of other arrangements and subject to the reservation that the provisions of Chapter III apply so far as they are not inconsistent.

ART. 87. Each of the parties in dispute appoints an Arbitrator. The two Arbitrators thus selected choose an Umpire. If they do not agree on this point, each of them proposes two candidates taken from the general list of the members of the Permanent Court exclusive of the members appointed by either of the parties and not being nationals of either of them; which of the candidates thus proposed shall be the Umpire is determined by lot.

The Umpire presides over the Tribunal, which gives its decisions by a majority of votes.

ART. 88. In the absence of any previous agreement the Tribunal,

as soon as it is formed, settles the time within which the two parties must submit their respective cases to it.

ART. 89. Each party is represented before the Tribunal by an agent, who serves as intermediary between the Tribunal and the Government which has appointed him.

ART. 90. The proceedings are conducted exclusively in writing. Each party, however, is entitled to ask that witnesses and experts should be called. The Tribunal has, for its part, the right to demand oral explanations from the agents of the two parties, as well as from the experts and witnesses whose appearance in Court it may consider useful.

General Provisions

ART. 91. The present Convention, duly ratified, shall replace, as between the Contracting Powers, the Convention for the Pacific Settlement of International Disputes of the 29th July, 1899.

ART. 92. The present Convention shall be ratified as speedily as possible.

The ratifications shall be deposited at The Hague.

The first deposit of ratifications shall be recorded in a *procès-verbal* signed by the Representatives of the Powers which take part therein and by the Netherland Minister for Foreign Affairs.

The subsequent deposits of ratifications shall be made by means of a written notification, addressed to the Netherland Government and accompanied by the instrument of ratification.

A duly certified copy of the *procès-verbal* relative to the first deposit of ratifications, of the notifications mentioned in the preceding paragraph, and of the instruments of ratification, shall be immediately sent by the Netherland Government, through the diplomatic channel, to the Powers invited to the Second Peace Conference, as well as to those Powers which have adhered to the Convention. In the cases contemplated in the preceding paragraph, the said Government shall at the same time inform the Powers of the date on which it received the notification.

ART. 93. The non-Signatory Powers which have been invited to the Second Peace Conference may adhere to the present Convention.

The Power which desires to adhere notifies its intention in writing to the Netherland Government, forwarding to it the act of adhesion, which shall be deposited in the archives of the said Government.

This Government shall immediately forward to all the other Powers

invited to the Second Peace Conference a duly certified copy of the notification as well as of the act of adhesion, mentioning the date on which it received the notification.

ART. 94. The conditions on which the Powers which have not been invited to the Second Peace Conference may adhere to the present Convention shall form the subject of a subsequent Agreement between the Contracting Powers.

ART. 95. The present Convention shall take effect, in the case of the Powers which were parties to the first deposit of ratifications, sixty days after the date of the *procès-verbal* of this deposit, and, in the case of the Powers which ratify subsequently or which adhere, sixty days after the notification of their ratification or of their adhesion has been received by the Netherland Government.

ART. 96. In the event of one of the Contracting Parties wishing to denounce the present Convention, the denunciation shall be notified in writing to the Netherland Government, which shall immediately communicate a duly certified copy of the notification to all the other Powers informing them of the date on which it was received.

The denunciation shall only have effect in regard to the notifying Power, and one year after the notification has reached the Netherland Government.

ART. 97. A register kept by the Netherland Minister for Foreign Affairs shall give the date of the deposit of ratifications effected in virtue of Article 92, paragraphs 3 and 4, as well as the date on which the notifications of adhesion (Article 93, paragraph 2) or of denunciation (Article 96, paragraph 1) have been received.

Each Contracting Power is entitled to have access to this register and to be supplied with duly certified extracts from it.

In faith whereof the Plenipotentiaries have appended their signatures to the present Convention.

Done at The Hague, the 18th October, 1907, in a single copy, which shall remain deposited in the archives of the Netherland Government, and duly certified copies of which shall be sent, through the diplomatic channel, to the Contracting Powers.

The said Convention was ratified by the Senate of the United States of America under reservation of the following declaration:

"Nothing contained in this convention shall be so construed as to require the United States of America to depart from its traditional policy of not intruding upon, interfering with, or entangling itself in

the political questions of policy or internal administration of any foreign state; nor shall anything contained in the said convention be construed to imply a relinquishment by the United States of America of its traditional attitude toward purely American questions."

Resolved further, as a part of this act of ratification, That the United States approves this convention with the understanding that recourse to the permanent court for the settlement of differences can be had only by agreement thereto through general or special treaties of arbitration heretofore or hereafter concluded between the parties in dispute; and the United States now exercises the option contained in Article 53 of said convention, to exclude the formulation of the "Compromis" by the permanent court, and hereby excludes from the competence of the permanent court the power to frame the "Compromis" required by general or special treaties of arbitration concluded or hereafter to be concluded by the United States, and further expressly declares that the "Compromis" required by any treaty of arbitration to which the United States may be a party shall be settled only by agreement between the contracting parties, unless such treaty shall expressly provide otherwise.

APPENDIX V

CONVENTION (IV) RESPECTING THE LAWS AND CUSTOMS OF WAR ON LAND

[Names of States.[1]]

Considering that, while seeking means to preserve peace and prevent armed conflicts between nations, it is likewise necessary to bear in mind the case where the appeal to arms has been brought about by events which their care was unable to avert;

Animated by the desire to serve, even in this extreme case, the interests of humanity and the ever progressive needs of civilization;

Thinking it important, with this object, to revise the general laws and customs of war, either with a view to defining them more precisely, or to confining them within such limits as would mitigate their severity as far as possible;

Have deemed it necessary to complete and explain in certain particulars the work of the First Peace Conference, which, following on the Brussels Conference of 1874, and inspired by the ideas dictated by a wise and generous forethought, adopted provisions intended to define and govern the usages of war on land.

According to the views of the High Contracting Parties, these provisions, the wording of which has been inspired by the desire to diminish the evils of war as far as military necessities permit, are intended to serve as a general rule of conduct for the belligerents in their relations with each other and with the inhabitants.

It has not, however, been found possible at present to concert regulations covering all the circumstances which occur in practice.

On the other hand, it could not be intended by the High Contracting Parties that the unforeseen cases should, in the absence of a written undertaking, be left to the arbitrary judgment of military Commanders.

Until a more complete code of the laws of war has been issued, the

[1] For names of States see Appendix IV, p. 389.

High Contracting Parties deem it expedient to declare that in cases not included in the Regulations adopted by them, the inhabitants and the belligerents remain under the protection and the rule of the principles of international law, as they result from the usages established among civilized peoples, from the laws of humanity, and the dictates of the public conscience.

They declare that it is in this sense especially that Articles 1 and 2 of the Regulations adopted must be understood.

The High Contracting Parties, desiring to conclude a fresh Convention to this effect, have appointed as their Plenipotentiaries, to wit:—

[Names of Plenipotentiaries.]

Who, after having deposited their full powers, found in good and due form, have agreed upon the following:—

ARTICLE 1. The High Contracting Parties shall issue instructions to their armed land forces, which shall be in conformity with the Regulations respecting the Laws and Customs of War on Land, annexed to the present Convention.

ART. 2. The provisions contained in the Regulations referred to in Article 1, as well as in the present Convention, do not apply except between Contracting Powers, and then only if all the belligerents are parties to the Convention.

ART. 3. A belligerent party which violates the provisions of the said Regulations shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces.

ART. 4. The present Convention, duly ratified, shall as between the Contracting Powers, be substituted for the Convention of the 29th July, 1899, respecting the Laws and Customs of War on Land.

The Convention of 1899 remains in force as between the Powers which signed it, and which do not also ratify the present Convention.

ART. 5. The present Convention shall be ratified as soon as possible.

The ratifications shall be deposited at The Hague.

The first deposit of ratifications shall be recorded in a *procès-verbal* signed by the Representatives of the Powers which take part therein and by the Netherland Minister for Foreign Affairs.

The subsequent deposits of ratifications shall be made by means of a written notification, addressed to the Netherland Government and accompanied by the instrument of ratification.

A duly certified copy of the *procès-verbal* relative to the first deposit of ratifications, of the notifications mentioned in the preceding paragraph, as well as of the instruments of ratification, shall be immediately sent by the Netherland Government, through the diplomatic channel, to the Powers invited to the Second Peace Conference, as well as to the other Powers which have adhered to the Convention. In the cases contemplated in the preceding paragraph the said Government shall at the same time inform them of the date on which it received the notification.

ART. 6. Non-Signatory Powers may adhere to the present Convention.

The Power which desires to adhere notifies in writing its intention to the Netherland Government, forwarding to it the act of adhesion, which shall be deposited in the archives of the said Government.

This Government shall at once transmit to all the other Powers a duly certified copy of the notification as well as of the act of adhesion, mentioning the date on which it received the notification.

ART. 7. The present Convention shall come into force, in the case of the Powers which were a party to the first deposit of ratifications sixty days after the date of the *procès-verbal* of this deposit, and, in the case of the Powers which ratify subsequently or which adhere, sixty days after the notification of their ratification or of their adhesion has been received by the Netherland Government.

ART. 8. In the event of one of the Contracting Powers wishing to denounce the present Convention, the denunciation shall be notified in writing to the Netherland Government, which shall at once communicate a duly certified copy of the notification to all the other Powers, informing them of the date on which it was received.

The denunciation shall only have effect in regard to the notifying Power, and one year after the notification has reached the Netherland Government.

ART. 9. A register kept by the Netherland Ministry for Foreign Affairs shall give the date of the deposit of ratifications made in virtue of Article 5, paragraphs 3 and 4, as well as the date on which the notifications of adhesion (Article 6, paragraph 2) or of denunciation (Article 8, paragraph 1) were received.

Each Contracting Power is entitled to have access to this register and to be supplied with duly certified extracts.

In faith whereof the Plenipotentiaries have appended their signatures to the present Convention.

Done at The Hague, the 18th October, 1907, in a single copy, which shall remain deposited in the archives of the Netherland Government, and duly certified copies of which shall be sent, through the diplomatic channel, to the Powers which have been invited to the Second Peace Conference.

ANNEX TO THE CONVENTION

REGULATIONS RESPECTING THE LAWS AND CUSTOMS OF WAR ON LAND

SECTION I

Belligerents

Chapter I. *On the Qualifications of Belligerents*

Article 1. The laws, rights, and duties of war apply not only to armies, but also to militia and volunteer corps, fulfilling the following conditions:

1. To be commanded by a person responsible for his subordinates;
2. To have a fixed distinctive emblem recognizable at a distance;
3. To carry arms openly; and
4. To conduct their operations in accordance with the laws and customs of war.

In countries where militia or volunteer corps constitute the army, or form part of it, they are included under the denomination "army."

Art. 2. The population of a territory which has not been occupied who, on the enemy's approach, spontaneously take up arms to resist the invading troops without having had time to organize themselves in accordance with Article 1, shall be regarded as belligerent if they carry arms openly and if they respect the laws and customs of war.

Art. 3. The armed forces of the belligerent parties may consist of combatants and noncombatants. In case of capture by the enemy both have a right to be treated as prisoners of war.

Chapter II. *Prisoners of War*

Art. 4. Prisoners of war are in the power of the hostile Government, but not in that of the individuals or corps who captured them.

They must be humanely treated.

All their personal belongings, except arms, horses, and military papers, remain their property.

ART. 5. Prisoners of war may be interned in a town, fortress, camp, or any other locality, and bound not to go beyond certain fixed limits; but they cannot be confined except as an indispensable measure of safety, and only while the circumstances which necessitate the measure continue to exist.

ART. 6. The State may utilize the labor of prisoners of war according to their rank and aptitude, officers excepted. Their tasks shall not be excessive, and shall have nothing to do with the military operations.

Prisoners may be authorized to work for the public service, for private persons, or on their own account.

Work done for the State shall be paid for according to the rates in force for soldiers of the national army employed on similar tasks, or, if there are none in force, at a rate according to the work executed.

When the work is for other branches of the public service or for private persons, the conditions shall be settled in agreement with the military authorities.

The wages of the prisoners shall go towards improving their position, and the balance shall be paid them at the time of their release, after deducting the cost of their maintenance.

ART. 7. The Government into whose hands prisoners of war have fallen is bound to maintain them.

Failing a special agreement between the belligerents, prisoners of war shall be treated as regards food, quarters, and clothing, on the same footing as the troops of the Government which has captured them.

ART. 8. Prisoners of war shall be subject to the laws, regulations, and orders in force in the army of the State into whose hands they have fallen.

Any act of insubordination warrants the adoption, as regards them, of such measures of severity as may be necessary.

Escaped prisoners, recaptured before they have succeeded in rejoining their army or before quitting the territory occupied by the army that captured them, are liable to disciplinary punishment.

Prisoners, who after succeeding in escaping are again taken prisoners, are not liable to any punishment for the previous flight.

ART. 9. Every prisoner of war, if questioned, is bound to declare his true name and rank, and if he disregards this rule, he is liable to a curtailment of the advantages accorded to the prisoners of war of his class.

ART. 10. Prisoners of war may be set at liberty on parole if the

laws of their country authorize it, and, in such a case, they are bound, on their personal honor, scrupulously to fulfill, both as regards their own Government and the Government by which they were made prisoners, the engagements they have contracted.

In such cases, their own Government shall not require of nor accept from them any service incompatible with the parole given.

ART. 11. A prisoner of war cannot be forced to accept his liberty on parole; similarly the hostile Government is not obliged to assent to the prisoner's request to be set at liberty on parole.

ART. 12. Any prisoner of war, who is liberated on parole and recaptured, bearing arms against the Government to whom he had pledged his honor, or against the allies of that Government, forfeits his right to be treated as a prisoner of war, and can be brought before the Courts.

ART. 13. Individuals who follow an army without directly belonging to it, such as newspaper correspondents and reporters, sutlers, contractors, who fall into the enemy's hands, and whom the latter think fit to detain, have a right to be treated as prisoners of war, provided they can produce a certificate from the military authorities of the army they were accompanying.

ART. 14. A bureau for information relative to prisoners of war is instituted, on the commencement of hostilities, in each of the belligerent States, and when necessary, in the neutral countries on whose territory belligerents have been received. This bureau is intended to answer all inquiries about prisoners of war, and is furnished by the various services concerned with all the information respecting interments and transfers, releases on parole, exchanges, escapes, admissions into hospital, deaths, as well as other information necessary to enable it to make out and keep up to date an individual return for each prisoner of war. The bureau must state in this return the regimental number, name and surname, age, place of origin, rank, unit, wounds, date and place of capture, of internment, the wounds, and the death, as well as any observations of a special character. The individual return shall be sent to the Government of the other belligerent after the conclusion of peace.

It is also the duty of the information bureau to receive and collect all objects of personal use, valuables, letters, etc., found on the battlefields or left by prisoners who have been released on parole, or exchanged, or who have escaped or died in hospitals or ambulances, and to transmit them to those interested.

Art. 15. Relief Societies for prisoners of war, which are properly constituted in accordance with the law of the country with the object of serving as the intermediary for charity, shall receive from the belligerents for themselves and their duly accredited agents every facility, within the bounds of military requirements and administrative regulations for the effective accomplishment of their humane task. Delegates of these Societies may be admitted to the places of internment for the distribution of relief, as also to the halting places of repatriated prisoners, if furnished with a personal permit by the military authorities, and on giving an engagement in writing to comply with all regulations for order and police which they may prescribe.

Art. 16. The information bureau shall have the privilege of free postage. Letters, money orders, and valuables, as well as postal parcels destined for the prisoners of war or dispatched by them, shall be free of all postal duties both in the countries of origin and destination, as well as in those they pass through.

Gifts and relief in kind for prisoners of war shall be admitted free of all duties of entry and others, as well as of payments for carriage by the State railways.

Art. 17. Officers taken prisoners shall receive the same rate of pay as officers of corresponding rank in the country where they are detained, the amount to be ultimately refunded by their own Government.

Art. 18. Prisoners of war shall enjoy complete liberty in the exercise of their religion, including attendance at their own church services, provided only they comply with the regulations for order and police issued by the military authorities.

Art. 19. The wills of prisoners of war are received or drawn up on the same conditions as for soldiers of the national army.

The same rules shall be observed regarding death certificates, as well as for the burial of prisoners of war, due regard being paid to their grade and rank.

Art. 20. After the conclusion of peace, the repatriation of prisoners of war shall take place as speedily as possible.

Chapter III. *The Sick and Wounded*

Art. 21. The obligations of belligerents with regard to the sick and wounded are governed by the Geneva Convention.

SECTION II

Hostilities

Chapter I. *On Means of injuring the Enemy, Sieges and Bombardments*

Art. 22. The right of belligerents to adopt means of injuring the enemy is not unlimited.

Art. 23. Besides the prohibitions provided by special Conventions, it is especially prohibited:—

(*a*) To employ poison or poisoned arms;

(*b*) To kill or wound treacherously individuals belonging to the hostile nation or army;

(*c*) To kill or wound an enemy who, having laid down arms, or having no longer means of defense, has surrendered at discretion;

(*d*) To declare that no quarter will be given;

(*e*) To employ arms, projectiles, or material of a nature to cause superfluous injury;

(*f*) To make improper use of a flag of truce, the national flag, or military ensigns and the enemy's uniform, as well as the distinctive badges of the Geneva Convention;

(*g*) To destroy or seize the enemy's property, unless such destruction or seizure be imperatively demanded by the necessities of war;

(*h*) To declare abolished, suspended, or inadmissible in a court of law the rights and actions of the nationals of the hostile party.

A belligerent is likewise forbidden to compel the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of war.

Art. 24. Ruses of war and the employment of methods necessary to obtain information about the enemy and the country, are considered allowable.

Art. 25. The attack or bombardment, by whatever means, of towns, villages, habitations or buildings which are not defended, is prohibited.

Art. 26. The Commander of an attacking force, before commencing a bombardment, except in the case of an assault, should do all he can to warn the authorities.

Art. 27. In sieges and bombardments all necessary steps should

be taken to spare as far as possible edifices devoted to religion, art, science, and charity, historic monuments, hospitals, and places where the sick and wounded are collected, provided they are not used at the same time for military purposes.

The besieged should indicate these buildings or places by some particular and visible signs, which should previously be notified to the assailants.

ART. 28. The pillage of a town or place, even when taken by assault, is prohibited.

CHAPTER II. *Spies*

ART. 29. An individual can only be considered a spy if, acting clandestinely, or on false pretenses, he obtains, or seeks to obtain information in the zone of operations of a belligerent, with the intention of communicating it to the hostile party.

Thus, soldiers not in disguise who have penetrated into the zone of operations of a hostile army to obtain information are not considered spies. Similarly, the following are not considered spies: soldiers or civilians, carrying out their mission openly, charged with the delivery of dispatches destined either for their own army or for that of the enemy. To this class belong likewise individuals sent in balloons to deliver dispatches, and generally to maintain communication between the various parts of an army or a territory.

ART. 30. A spy taken in the act cannot be punished without previous trial.

ART. 31. A spy who, after rejoining the army to which he belongs, is subsequently captured by the enemy, is treated as a prisoner of war and incurs no responsibility for his previous acts of espionage.

CHAPTER III. *Flags of Truce*

ART. 32. An individual is considered as bearing a flag of truce who is authorized by one of the belligerents to enter into communication with the other, and who carries a white flag. He has a right to inviolability, as well as the trumpeter, bugler, or drummer, the flag-bearer and the interpreter who may accompany him.

ART. 33. The Chief to whom a flag of truce is sent is not obliged to receive it in all circumstances.

He can take all steps necessary to prevent the envoy taking advantage of his mission to obtain information.

In case of abuse, he has the right to detain the envoy temporarily.

ART. 34. The bearer of a flag of truce loses his rights of inviolability if it is proved beyond doubt that he has taken advantage of his privileged position to provoke or commit an act of treachery.

CHAPTER IV. *Capitulations*

ART. 35. Capitulations agreed on between the Contracting Parties must be in accordance with the rules of military honor.

When once settled, they must be scrupulously observed by both the parties.

CHAPTER V. *Armistices*

ART. 36. An armistice suspends military operations by mutual agreement between the belligerent parties. If its duration is not fixed, the belligerent parties can resume operations at any time, provided always the enemy is warned within the time agreed upon, in accordance with the terms of the armistice.

ART. 37. An armistice may be general or local. The first suspends all military operations of the belligerent States; the second, only those between certain fractions of the belligerent armies and in a fixed radius.

ART. 38. An armistice must be notified officially, and in good time, to the competent authorities and the troops. Hostilities are suspended immediately after the notification, or at a fixed date.

ART. 39. It is for the Contracting Parties to settle, in the terms of the armistice, what communications may be held, on the theater of war, with the population and with each other.

ART. 40. Any serious violation of the armistice by one of the parties gives the other party the right to denounce it, and even, in case of urgency, to recommence hostilities at once.

ART. 41. A violation of the terms of the armistice by individuals acting on their own initiative, only confers the right of demanding the punishment of the offenders, and, if necessary, indemnity for the losses sustained.

SECTION III

MILITARY AUTHORITY OVER HOSTILE TERRITORY

ART. 42. Territory is considered occupied when it is actually placed under the authority of the hostile army.

The occupation applies only to the territory where such authority is established, and in a position to assert itself.

ART. 43. The authority of the legitimate power having actually passed into the hands of the occupant, the latter shall take all steps in his power to reëstablish and insure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.

ART. 44. Any compulsion of the population of occupied territory to furnish information about the army of the other belligerent or about its means of defense is prohibited.

ART. 45. Any pressure on the population of occupied territory to take the oath to the hostile Power is prohibited.

ART. 46. Family honor and rights, individual lives and private property, as well as religious convictions and practice, must be respected.

Private property cannot be confiscated.

ART. 47. Pillage is formally prohibited.

ART. 48. If, in the territory occupied, the occupant collects the taxes, dues, and tolls imposed for the benefit of the State, he shall do it, as far as possible, in accordance with the rules in existence and the assessment in force, and will in consequence be bound to defray the expenses of the administration of the occupied territory on the same scale as that by which the legitimate Government was bound.

ART. 49. If, besides the taxes mentioned in the preceding Article, the occupant levies other money taxes in the occupied territory, this can only be for military necessities or the administration of such territory.

ART. 50. No general penalty, pecuniary or otherwise, can be inflicted on the population on account of the acts of individuals for which it cannot be regarded as collectively responsible.

ART. 51. No contribution shall be collected except under a written order and on the responsibility of a Commander-in-chief.

This collection shall only take place, as far as possible, in accordance with the rules in existence and the assessment of taxes in force.

For every payment a receipt shall be given to the payer.

ART. 52. Neither requisition in kind nor services can be demanded from communes or inhabitants except for the necessities of the army of occupation. They must be in proportion to the resources of the country, and of such a nature as not to involve the population in the

obligation of taking part in military operations against their own country.

These requisitions and services shall only be demanded on the authority of the Commander in the locality occupied.

The requisitions in kind shall, as far as possible, be paid for in ready money; if not, a receipt shall be given and the payment of the amount due shall be made as soon as possible.

ART. 53. An army of occupation can only take possession of the cash, funds, and realizable securities belonging strictly to the State, depôts of arms, means of transport, stores and supplies, and, generally, all movable property of the State which may be used for military operations.

All appliances, whether on land, at sea, or in the air, adapted for the transmission of news, or for the transport of persons or things, apart from cases governed by maritime law, depôts of arms and, generally, all kinds of war material may be seized, even though belonging to private persons, but they must be restored at the conclusion of peace, and indemnities paid for them.

ART. 54. Submarine cables connecting an occupied territory with a neutral territory shall not be seized or destroyed except in the case of absolute necessity. They must likewise be restored and compensation fixed when peace is made.

ART. 55. The occupying State shall be regarded only as administrator and usufructuary of the public buildings, real estate, forests, and agricultural works belonging to the hostile State, and situated in the occupied country. It must protect the capital of these properties, and administer it according to the rules of usufruct.

ART. 56. The property of the communes, that of religious, charitable, and educational institutions, and those of arts and science, even when State property, shall be treated as private property.

All seizure of, and destruction, or intentional damage done to such institutions, to historical monuments, works of art or science, is prohibited, and should be made the subject of proceedings.

APPENDIX VI

CONVENTION (V) RESPECTING THE RIGHTS AND DUTIES OF NEUTRAL POWERS AND PERSONS IN CASE OF WAR ON LAND

[Names of States.[1]]

With a view to laying down more clearly the rights and duties of neutral Powers in case of war on land and regulating the position of the belligerents who have taken refuge in neutral territory;

Being likewise desirous of defining the meaning of the term "neutral," pending the possibility of settling, in its entirety, the position of neutral individuals in their relations with the belligerents;

Have resolved to conclude a Convention to this effect, and have, in consequence, appointed the following as their Plenipotentiaries:

[Names of Plenipotentiaries.]

Who, after having deposited their full powers, found in good and due form, have agreed upon the following provisions:

CHAPTER I. *The Rights and Duties of Neutral Powers*

ARTICLE 1. The territory of neutral Powers is inviolable.

ART. 2. Belligerents are forbidden to move troops or convoys of either munitions of war or supplies across the territory of a neutral Power.

ART. 3. Belligerents are likewise forbidden to:

(*a*) Erect on the territory of a neutral Power a wireless telegraphy station or other apparatus for the purpose of communicating with belligerent forces on land or sea.

(*b*) Use any installation of this kind established by them before the war on the territory of a neutral Power for purely military purposes, and which has not been opened for the service of public messages.

[1] For names of States see Appendix IV, p. 389.

ART. 4. Corps of combatants cannot be formed nor recruiting agencies opened on the territory of a neutral Power to assist the belligerents.

ART. 5. A neutral Power must not allow any of the acts referred to in Articles 2 to 4 to occur on its territory.

It is not called upon to punish acts in violation of its neutrality unless the said acts have been committed on its own territory.

ART. 6. The responsibility of a neutral Power is not engaged by the fact of persons crossing the frontier separately to offer their services to one of the belligerents.

ART. 7. A neutral Power is not called upon to prevent the export or transport, on behalf of one or other of the belligerents, of arms, munitions of war, or, in general, of anything which can be of use to an army or a fleet.

ART. 8. A neutral Power is not called upon to forbid or restrict the use on behalf of the belligerents of telegraph or telephone cables or of wireless telegraphy apparatus belonging to it or to companies or private individuals.

ART. 9. Every measure of restriction or prohibition taken by a neutral Power in regard to the matters referred to in Articles 7 and 8 must be impartially applied by it to both belligerents.

A neutral Power must see to the same obligation being observed by companies or private individuals owning telegraph or telephone cables or wireless telegraphy apparatus.

ART. 10. The fact of a neutral Power resisting, even by force, attempts to violate its neutrality cannot be regarded as a hostile act.

CHAPTER II. *Internment of Belligerents and Care of Wounded in Neutral Territory*

ART. 11. A neutral Power which receives on its territory troops belonging to the belligerent armies shall intern them, as far as possible, at a distance from the theater of war.

It may keep them in camps and even confine them in fortresses or in places set apart for this purpose.

It shall decide whether officers may be left at liberty on giving their parole not to leave the neutral territory without permission.

ART. 12. In the absence of a special Convention to the contrary, the neutral Power shall supply the interned with the food, clothing, and relief required by humanity.

At the conclusion of peace the expenses caused by the internment shall be made good.

ART. 13. A neutral Power which receives escaped prisoners of war shall leave them at liberty. If it allows them to remain in its territory it may assign them a place of residence.

The same rule applies to prisoners of war brought by troops taking refuge in the territory of a neutral Power.

ART. 14. A neutral Power may authorize the passage into its territory of the sick and wounded belonging to the belligerent armies, on condition that the trains bringing them shall carry neither personnel nor material of war. In such a case, the neutral Power is bound to take whatever measures of safety and control are necessary for the purpose.

The sick or wounded brought under these conditions into neutral territory by one of the belligerents, and belonging to the hostile party, must be guarded by the neutral Power so as to insure their not taking part again in the military operations. The same duty shall devolve on the neutral State with regard to wounded or sick of the other army who may be committed to its care.

ART. 15. The Geneva Convention applies to sick and wounded interned in neutral territory.

CHAPTER III. *Neutral Persons*

ART. 16. The nationals of a State which is not taking part in the war are considered as neutrals.

ART. 17. A neutral cannot avail himself of his neutrality:

(*a*) If he commits hostile acts against a belligerent;

(*b*) If he commits acts in favor of a belligerent, particularly if he voluntarily enlists in the ranks of the armed force of one of the parties.

In such a case, the neutral shall not be more severely treated by the belligerent as against whom he has abandoned his neutrality than a national of the other belligerent State could be for the same act.

ART. 18. The following acts shall not be considered as committed in favor of one belligerent in the sense of Article 17, letter (*b*):

(*a*) The furnishing of supplies or loans to one of the belligerents, provided that the person who furnishes the supplies or who makes the loans lives neither in the territory of the other party nor in the territory occupied by him, and that the supplies do not come from these territories;

(*b*) The rendering of services in matters of police or civil administration.

Chapter IV. *Railway Material*

Art. 19. Railway material coming from the territory of neutral Powers, whether it be the property of the said Powers or of companies or private persons, and recognizable as such, shall not be requisitioned or utilized by a belligerent except where and to the extent that it is absolutely necessary. It shall be sent back as soon as possible to the country of origin.

A neutral Power may likewise, in case of necessity, retain and utilize to an equal extent material coming from the territory of the belligerent Power.

Compensation shall be paid by one party or the other in proportion to the material used, and to the period of usage.

Chapter V. *Final Provisions*

Art. 20. The provisions of the present Convention do not apply except between Contracting Powers, and then only if all the belligerents are parties to the Convention.

[Articles providing for ratification follow.]

APPENDIX VII

CONVENTION (VI) RELATIVE TO THE STATUS OF ENEMY MERCHANT-SHIPS AT THE OUTBREAK OF HOSTILITIES

[Names of States.[1]]

Anxious to insure the security of international commerce against the surprises of war, and wishing, in accordance with modern practice, to protect as far as possible operations undertaken in good faith and in process of being carried out before the outbreak of hostilities, have resolved to conclude a Convention to this effect, and have appointed the following persons as their Plenipotentiaries:

[Names of Plenipotentiaries.]

Who, after having deposited their full powers, found in good and due form, have agreed upon the following provisions:

ARTICLE 1. When a merchant-ship belonging to one of the belligerent Powers is at the commencement of hostilities in an enemy port, it is desirable that it should be allowed to depart freely, either immediately, or after a reasonable number of days of grace, and to proceed, after being furnished with a pass, direct to its port of destination or any other port indicated.

The same rule should apply in the case of a ship which has left its last port of departure before the commencement of the war and entered a port belonging to the enemy while still ignorant that hostilities had broken out.

ART. 2. A merchant-ship unable, owing to circumstances of *force majeure*, to leave the enemy port within the period contemplated in the above Article, or which was not allowed to leave, cannot be confiscated.

The belligerent may only detain it, without payment of compensation, but subject to the obligation of restoring it after the war, or requisition it on payment of compensation.

[1] For names of States see Appendix IV, p. xli.

ART. 3. Enemy merchant-ships which left their last port of departure before the commencement of the war, and are encountered on the high seas while still ignorant of the outbreak of hostilities cannot be confiscated. They are only liable to detention on the understanding that they shall be restored after the war without compensation, or to be requisitioned, or even destroyed, on payment of compensation, but in such case provision must be made for the safety of the persons on board as well as the security of the ship's papers.

After touching at a port in their own country or at a neutral port, these ships are subject to the laws and customs of maritime war.

ART. 4. Enemy cargo on board the vessels referred to in Articles 1 and 2 is likewise liable to be detained and restored after the termination of the war without payment of compensation or to be requisitioned on payment of compensation, with or without the ship.

The same rule applies in the case of cargo on board the vessels referred to in Article 3.

ART. 5. The present Convention does not affect merchant-ships whose build shows that they are intended for conversion into warships.

ART. 6. The provisions of the present Convention do not apply except between Contracting Powers, and then only if all the belligerents are parties to the Convention.

[Articles providing for ratification follow.]

APPENDIX VIII

CONVENTION (X) FOR THE ADAPTATION TO NAVAL WAR OF THE PRINCIPLES OF THE GENEVA CONVENTION

[Names of States.[1]]

Animated alike by the desire to diminish, as far as depends on them, the inevitable evils of war;

And wishing with this object to adapt to maritime warfare the principles of the Geneva Convention of the 6th July, 1906;

Have resolved to conclude a Convention for the purpose of revising the Convention of the 29th July, 1899, relative to this question, and have appointed the following as their Plenipotentiaries:

[Names of Plenipotentiaries.]

Who, after having deposited their full powers, found in good and due form, have agreed upon the following provisions:

ARTICLE 1. Military hospital-ships, that is to say, ships constructed or assigned by States specially and solely with a view to assisting the wounded, sick, and shipwrecked, the names of which have been communicated to the belligerent Powers at the commencement or during the course of hostilities, and in any case before they are employed, shall be respected, and cannot be captured while hostilities last.

These ships, moreover, are not on the same footing as war-ships as regards their stay in a neutral port.

ART. 2. Hospital-ships, equipped wholly or in part at the expense of private individuals or officially recognized relief societies, shall be likewise respected and exempt from capture, if the belligerent Power to whom they belong has given them an official commission and has notified their names to the hostile Power at the commencement of or during hostilities, and in any case before they are employed.

[1] For names of States see Appendix IV, p. xli.

These ships must be provided with a certificate from the competent authorities declaring that the vessels have been under their control while fitting out and on final departure.

Art. 3. Hospital-ships, equipped wholly or in part at the expense of private individuals or officially recognized societies of neutral countries, shall be respected and exempt from capture, on condition that they are placed under the control of one of the belligerents, with the previous consent of their own Government and with the authorization of the belligerent himself, and that the latter has notified their name to his adversary at the commencement of or during hostilities, and in any case, before they are employed.

Art. 4. The ships mentioned in Articles 1, 2, and 3 shall afford relief and assistance to the wounded, sick, and shipwrecked of the belligerents without distinction of nationality.

The Governments undertake not to use these ships for any military purpose.

These vessels must in no wise hamper the movements of the combatants.

During and after an engagement they will act at their own risk and peril.

The belligerents shall have the right to control and visit them; they can refuse their help, order them off, make them take a certain course, and put a Commissioner on board; they can even detain them, if important circumstances require it.

As far as possible, the belligerents shall enter in the log of the hospital-ships the orders which they give them.

Art. 5. Military hospital-ships shall be distinguished by being painted white outside with a horizontal band of green about a metre and a half in breadth.

The ships mentioned in Articles 2 and 3 shall be distinguished by being painted white outside with a horizontal band of red about a metre and a half in breadth.

The boats of the ships above mentioned, as also small craft which may be used for hospital work, shall be distinguished by similar painting.

All hospital-ships shall make themselves known by hoisting, with their national flag, the white flag with a red cross provided by the Geneva Convention, and further, if they belong to a neutral State, by flying at the mainmast the national flag of the belligerent under whose control they are placed.

Hospital-ships which, in the terms of Article 4, are detained by the enemy, must haul down the national flag of the belligerent to whom they belong.

The ships and boats above mentioned which wish to insure by night the freedom from interference to which they are entitled, must, subject to the assent of the belligerent they are accompanying, take the necessary measures to render their special painting sufficiently plain.

ART. 6. The distinguishing signs referred to in Article 5 can only be used, whether in time of peace or war, for protecting or indicating the ships therein mentioned.

ART. 7. In the case of a fight on board a war-ship, the sick-wards shall be respected and spared as far as possible.

The said sick-wards and the *matériel* belonging to them remain subject to the laws of war; they cannot, however, be used for any purpose other than that for which they were originally intended, so long as they are required for the sick and wounded.

The commander, however, into whose power they have fallen may apply them to other purposes, if the military situation requires it, after seeing that the sick and wounded on board are properly provided for.

ART. 8. Hospital-ships and sick-wards of vessels are no longer entitled to protection if they are employed for the purpose of injuring the enemy.

The fact of the staff of the said ships and sick-wards being armed for maintaining order and for defending the sick and wounded, and the presence of wireless telegraphy apparatus on board, is not a sufficient reason for withdrawing protection.

ART. 9. Belligerents may appeal to the charity of the commanders of neutral merchant-ships, yachts, or boats to take on board and tend the sick and wounded.

Vessels responding to this appeal, and also vessels which have of their own accord rescued sick, wounded, or shipwrecked men, shall enjoy special protection and certain immunities. In no case can they be captured for having such persons on board, but, subject to special promises that have been made to them, they remain liable to capture for any violations of neutrality they may have committed.

ART. 10. The religious, medical, and hospital staff of any captured ship is inviolable, and its members cannot be made prisoners

of war. On leaving the ship they take away with them the objects and surgical instruments which are their own private property.

This staff shall continue to discharge its duties while necessary, and can afterwards leave, when the Commander-in-chief considers it possible.

The belligerents must guarantee to the said staff, when it has fallen into their hands, the same allowances and pay which are given to the staff of corresponding rank in their own navy.

Art. 11. Sailors and soldiers on board, when sick or wounded, as well as other persons officially attached to fleets or armies, whatever their nationality, shall be respected and tended by the captors.

Art. 12. Any war-ship belonging to a belligerent may demand that sick, wounded, or shipwrecked men on board military hospital-ships, hospital-ships belonging to relief societies or to private individuals, merchant-ships, yachts, or boats, whatever the nationality of these vessels, should be handed over.

Art. 13. If sick, wounded, or shipwrecked persons are taken on board a neutral war-ship, every possible precaution must be taken that they do not again take part in the operations of the war.

Art. 14. The shipwrecked, wounded, or sick of one of the belligerents who fall into the power of the other belligerent are prisoners of war. The captor must decide, according to circumstances, whether to keep them, send them to a port of his own country, to a neutral port, or even to an enemy port. In this last case, prisoners thus repatriated cannot serve again while the war lasts.

Art. 15. The shipwrecked, sick, or wounded, who are landed at a neutral port with the consent of the local authorities, must, unless an arrangement is made to the contrary between the neutral State and the belligerent States, be guarded by the neutral State so as to prevent them again taking part in the operations of the war.

The expenses of tending them in hospital and interning them shall be borne by the State to which the shipwrecked, sick, or wounded persons belong.

Art. 16. After every engagement, the two belligerents, so far as military interests permit, shall take steps to look for the shipwrecked, sick, and wounded, and to protect them, as well as the dead, against pillage and ill treatment.

They shall see that the burial, whether by land or sea, or cremation of the dead shall be preceded by a careful examination of the corpses.

Art. 17. Each belligerent shall send, as early as possible, to the

authorities of their country, navy, or army the military marks or documents of identity found on the dead and the description of the sick and wounded picked up by him.

The belligerents shall keep each other reciprocally informed as to internments and transfers as well as to the admissions into hospital and deaths which have occurred among the sick and wounded in their hands. They shall collect all the objects of personal use, valuables, letters, etc., which are found in the captured ships, or which have been left by the sick or wounded who died in hospital, in order to have them forwarded to the persons concerned by the authorities of their own country.

ART. 18. The provisions of the present Convention do not apply except between Contracting Powers, and then only if all the belligerents are parties to the Convention.

ART. 19. The Commanders-in-chief of the belligerent fleets shall provide for the execution of the details of the above Articles, as also for cases not covered thereby, in accordance with the instructions of their respective Governments and in conformity with the general principles of the present Convention.

ART. 20. The Signatory Powers shall take the necessary measures for bringing the provisions of the present Convention to the knowledge of their naval forces, and especially of the members entitled thereunder to immunity, and for making them known to the public.

ART. 21. The Signatory Powers likewise undertake to enact or to propose to their Legislatures, if their criminal laws are inadequate, the measures necessary for checking in time of war individual acts of pillage and ill treatment in respect to the sick and wounded in the fleet, as well as for punishing, as an unjustifiable adoption of naval or military marks, the unauthorized use of the distinctive marks mentioned in Article 5 by vessels not protected by the present Convention.

They will communicate to each other, through the Netherland Government, the enactments for preventing such acts at the latest within five years of the ratification of the present Convention.

ART. 22. In the case of operations of war between the land and sea forces of belligerents, the provisions of the present Convention do not apply except between the forces actually on board ship.

[Articles providing for ratification follow.]

APPENDIX IX

CONVENTION (XI) RELATING TO THE EXERCISE OF THE RIGHT OF CAPTURE IN NAVAL WAR

[Names of States.[1]]

Recognizing the necessity of more effectively insuring than hitherto the equitable application of law to the maritime international relations in time of war;

Considering that, for this purpose, it is expedient, in giving up or, if necessary, in harmonizing for the common interest certain conflicting practices of long standing, to commence codifying in regulations of general application the guarantees due to peaceful commerce and legitimate business, as well as the conduct of hostilities by sea; that it is expedient to lay down in written mutual engagements the principles which have hitherto remained in the uncertain domain of controversy or have been left to the discretion of Governments;

That, from henceforth, a certain number of rules may be made, without affecting the common law now in force with regard to the matters which that law has left unsettled;

Have appointed the following as their Plenipotentiaries:

[Names of Plenipotentiaries.]

Who, after having deposited their full powers, found in good and due form, have agreed upon the following provisions:

Chapter I. *Postal Correspondence*

Article 1. The postal correspondence of neutrals or belligerents, whatever its official or private character may be, found on the high seas on board a neutral or enemy ship, is inviolable. If the ship is detained, the correspondence is forwarded by the captor with the least possible delay.

[1] For names of States see Appendix IV, p. xli.

The provisions of the preceding paragraph do not apply, in case of violation of blockade, to correspondence destined for or proceeding from a blockaded port.

Art. 2. The inviolability of postal correspondence does not exempt a neutral mail-ship from the laws and customs of maritime war as to neutral merchant-ships in general. The ship, however, may not be searched except when absolutely necessary, and then only with as much consideration and expedition as possible.

Chapter II. *The Exemption from Capture of Certain Vessels*

Art. 3. Vessels used exclusively for fishing along the coast or small boats employed in local trade are exempt from capture, as well as their appliances, rigging, tackle, and cargo.

They cease to be exempt as soon as they take any part whatever in hostilities.

The Contracting Powers agree not to take advantage of the harmless character of the said vessels in order to use them for military purposes while preserving their peaceful appearance.

Art. 4. Vessels charged with religious, scientific, or philanthropic missions are likewise exempt from capture.

Chapter III. *Regulations Regarding the Crews of Enemy Merchant-Ships Captured by a Belligerent*

Art. 5. When an enemy merchant-ship is captured by a belligerent, such of its crew as are nationals of a neutral State are not made prisoners of war.

The same rule applies in the case of the captain and officers likewise nationals of a neutral State, if they promise formally in writing not to serve on an enemy ship while the war lasts.

Art. 6. The captain, officers, and members of the crew, when nationals of the enemy State, are not made prisoners of war, on condition that they make a formal promise in writing, not to undertake, while hostilities last, any service connected with the operations of the war.

Art. 7. The names of the persons retaining their liberty under the conditions laid down in Article 5, paragraph 2, and in Article 6, are notified by the belligerent captor to the other belligerent. The latter is forbidden knowingly to employ the said persons.

ART. 8. The provisions of the three preceding Articles do not apply to ships taking part in the hostilities.

CHAPTER IV. *Final Provisions*

ART. 9. The provisions of the present Convention do not apply except between Contracting Powers, and then only if all the belligerents are parties to the Convention.

[Articles providing for ratification follow.]

APPENDIX X

CONVENTION (XIII) CONCERNING THE RIGHTS AND DUTIES OF NEUTRAL POWERS IN NAVAL WAR

[Names of States.[1]]

With a view to harmonizing the divergent views which, in the event of naval war, are still held on the relations between neutral Powers and belligerent Powers, and to anticipating the difficulties to which such divergence of views might give rise;

Seeing that, even if it is not possible at present to concert measures applicable to all circumstances which may in practice occur, it is nevertheless undeniably advantageous to frame, as far as possible, rules of general application to meet the case where war has unfortunately broken out;

Seeing that, in cases not covered by the present Convention, it is expedient to take into consideration the general principles of the law of nations;

Seeing that it is desirable that the Powers should issue detailed enactments to regulate the results of the attitude of neutrality when adopted by them;

Seeing that it is, for neutral Powers, an admitted duty to apply these rules impartially to the several belligerents;

Seeing that, in conformity with these ideas, these rules should not, in principle, be altered, in the course of the war, by a neutral Power, except in a case where experience has shown the necessity for such change for the protection of the rights of that Power;

Have agreed to observe the following common rules, which cannot however modify provisions laid down in existing general Treaties, and have appointed as their Plenipotentiaries, namely:

[Names of Plenipotentiaries.]

[1] For names of States see Appendix IV, p. xli.

Who, after having deposited their full powers, found in good and due form, have agreed upon the following provisions:

ARTICLE 1. Belligerents are bound to respect the sovereign rights of neutral Powers and to abstain, in neutral territory or neutral waters, from any act which would, if knowingly permitted by any Power, constitute a non-fulfillment of neutrality.

ART. 2. Any act of hostility, including capture and the exercise of the right of search, committed by belligerent war-ships in the territorial waters of a neutral Power, constitutes a violation of neutrality and is strictly forbidden.

ART. 3. When a ship has been captured in the territorial waters of a neutral Power, this Power must employ, if the prize is still within its jurisdiction, the means at its disposal to release the prize with its officers and crew, and to intern the prize crew.

If the prize is not in the jurisdiction of the neutral Power, the captor Government, on the demand of that Power, must liberate the prize with its officers and crew.

ART. 4. A Prize Court cannot be set up by a belligerent on neutral territory or on a vessel in neutral waters.

ART. 5. Belligerents are forbidden to use neutral ports and waters as a base of naval operations against their adversaries, and in particular to erect wireless telegraphy stations or any apparatus for the purpose of communicating with the belligerent forces on land or sea.

ART. 6. The supply, in any manner, directly or indirectly, by a neutral Power to a belligerent Power, of war-ships, ammunition, or war material of any kind whatever, is forbidden.

ART. 7. A neutral Power is not bound to prevent the export or transit, for the use of either belligerent, of arms, ammunitions, or, in general, of anything which could be of use to an army or fleet.

ART. 8. A neutral Government is bound to employ the means at its disposal to prevent the fitting out or arming of any vessel within its jurisdiction which it has reason to believe is intended to cruise, or engage in hostile operations, against a Power with which that Government is at peace. It is also bound to display the same vigilance to prevent the departure from its jurisdiction of any vessel intended to cruise, or engage in hostile operations, which had been adapted entirely or partly within the said jurisdiction for use in war.

ART. 9. A neutral Power must apply impartially to the two belligerents the conditions, restrictions, or prohibitions made by it in

regard to the admission into its ports, roadsteads, or territorial waters, of belligerent war-ships or of their prizes.

Nevertheless, a neutral Power may forbid a belligerent vessel which has failed to conform to the orders and regulations made by it, or which has violated neutrality, to enter its ports or roadsteads.

ART. 10. The neutrality of a Power is not affected by the mere passage through its territorial waters of war-ships or prizes belonging to belligerents.

ART. 11. A neutral Power may allow belligerent war-ships to employ its licensed pilots.

ART. 12. In the absence of special provisions to the contrary in the legislation of a neutral Power, belligerent war-ships are not permitted to remain in the ports, roadsteads, or territorial waters of the said Power for more than twenty-four hours, except in the cases covered by the present Convention.

ART. 13. If a Power which has been informed of the outbreak of hostilities learns that a belligerent war-ship is in one of its ports or roadsteads, or in its territorial waters, it must notify the said ship to depart within twenty-four hours or within the time prescribed by local regulations.

ART. 14. A belligerent war-ship may not prolong its stay in a neutral port beyond the permissible time except on account of damage or stress of weather. It must depart as soon as the cause of the delay is at an end.

The regulations as to the question of the length of time which these vessels may remain in neutral ports, roadsteads, or waters, do not apply to war-ships devoted exclusively to religious, scientific, or philanthropic purposes.

ART. 15. In the absence of special provisions to the contrary in the legislation of a neutral Power, the maximum number of war-ships belonging to a belligerent which may be in one of the ports or roadsteads of that Power simultaneously shall be three.

ART. 16. When war-ships belonging to both belligerents are present simultaneously in a neutral port or roadstead, a period of not less than twenty-four hours must elapse between the departure of the ship belonging to one belligerent and the departure of the ship belonging to the other.

The order of departure is determined by the order of arrival, unless the ship which arrived first is so circumstanced that an extension of its stay is permissible.

A belligerent war-ship may not leave a neutral port or roadstead until twenty-four hours after the departure of a merchant-ship flying the flag of its adversary.

ART. 17. In neutral ports and roadsteads belligerent war-ships may only carry out such repairs as are absolutely necessary to render them seaworthy, and may not add in any manner whatsoever to their fighting force. The local authorities of the neutral Power shall decide what repairs are necessary, and these must be carried out with the least possible delay.

ART. 18. Belligerent war-ships may not make use of neutral ports, roadsteads, or territorial waters for replenishing or increasing their supplies of war material or their armament, or for completing their crews.

ART. 19. Belligerent war-ships may only revictual in neutral ports or roadsteads to bring up their supplies to the peace standard.

Similarly these vessels may only ship sufficient fuel to enable them to reach the nearest port in their own country. They may, on the other hand, fill up their bunkers built to carry fuel, when in neutral countries which have adopted this method of determining the amount of fuel to be supplied.

If, in accordance with the law of the neutral Power, the ships are not supplied with coal within twenty-four hours of their arrival, the permissible duration of their stay is extended by twenty-four hours.

ART. 20. Belligerent war-ships which have shipped fuel in a port belonging to a neutral Power may not within the succeeding three months replenish their supply in a port of the same Power.

ART. 21. A prize may only be brought into a neutral port on account of unseaworthiness, stress of weather, or want of fuel or provisions.

It must leave as soon as the circumstances which justified its entry are at an end. If it does not, the neutral Power must order it to leave at once; should it fail to obey, the neutral Power must employ the means at its disposal to release it with its officers and crew and to intern the prize crew.

ART. 22. A neutral Power must, similarly, release a prize brought into one of its ports under circumstances other than those referred to in Article 21.

ART. 23. A neutral Power may allow prizes to enter its ports and roadsteads, whether or not under convoy, when they are brought there

to be sequestrated pending the decision of a Prize Court. It may have the prize taken to another of its ports.

If the prize is convoyed by a war-ship, the prize crew may go on board the convoying ship.

If the prize is not under convoy, the prize crew are left at liberty.

Art. 24. If, notwithstanding the notification of the neutral Power, a belligerent ship of war does not leave a port where it is not entitled to remain, the neutral Power is entitled to take such measures as it considers necessary to render the ship incapable of taking the sea during the war, and the commanding officer of the ship must facilitate the execution of such measures.

When a belligerent ship is detained by a neutral Power, the officers and crew are likewise detained.

The officers and crew thus detained may be left in the ship or kept either on another vessel or on land, and may be subjected to the measures of restriction which it may appear necessary to impose upon them. A sufficient number of men for looking after the vessel must, however, be always left on board.

The officers may be left at liberty on giving their word not to quit the neutral territory without permission.

Art. 25. A neutral Power is bound to exercise such surveillance as the means at its disposal allow to prevent any violation of the provisions of the above Articles occurring in its ports or roadsteads or in its waters.

Art. 26. The exercise by a neutral Power of the rights laid down in the present Convention can under no circumstances be considered as an unfriendly act by one or other belligerent who has accepted the Article relating thereto.

Art. 27. The Contracting Powers shall communicate to each other in due course all laws, ordinances, and other enactments regulating in their respective countries the status of belligerent war-ships in their ports and waters, by means of a communication addressed to the Government of the Netherlands and forwarded immediately by that Government to the other Contracting Powers.

Art. 28. The provisions of the present Convention do not apply except to the Contracting Powers, and then only if all the belligerents are parties to the Convention.

[Articles providing for ratification follow.]

[Reservation by the United States.]

Resolved (*two-thirds of the Senators present concurring therein*), That the Senate advise and consent to the adherence of the United States to a convention adopted by the Second International Peace Conference held at The Hague from June 15 to October 18, 1907, concerning the rights and duties of neutral powers in naval war, reserving and excluding, however, Article 23 thereof, which is in the following words:

A neutral power may allow prizes to enter its ports and roadsteads whether or not under convoy, when they are brought there to be sequestrated pending the decision of a prize court. It may have the prize taken to another of its ports.

If the prize is convoyed by a war-ship, the prize crew may go on board the convoying ship.

If the prize is not under convoy, the prize crew are left at liberty.

Resolved, further, That the United States adheres to this convention with the understanding that the last clause of Article 3 implies the duty of a neutral power to make the demand therein mentioned for the return of a ship captured within the neutral jurisdiction and no longer within that jurisdiction.

APPENDIX XI

DECLARATION OF LONDON

[Translation.]

DECLARATION CONCERNING THE LAWS OF NAVAL WAR

His Majesty the German Emperor, King of Prussia; the President of the United States of America; His Majesty the Emperor of Austria, King of Bohemia, &c., and Apostolic King of Hungary; His Majesty the King of Spain; the President of the French Republic; His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominion beyond the Seas, Emperor of India; His Majesty the King of Italy; His Majesty the Emperor of Japan; Her Majesty the Queen of the Netherlands; His Majesty the Emperor of All the Russias;

Considering the invitation which the British Government has given to various Powers to meet in conference in order to determine together as to what are the generally recognized rules of international law within the meaning of Article 7 of the Convention of 18th October, 1907, relative to the establishment of an International Prize Court;

Recognizing all the advantages which, in the unfortunate event of a naval war an agreement as to said rules would present, both as regards peaceful commerce, and as regards the belligerents and their diplomatic relations with neutral Governments;

Considering that the general principles of international law are often in their practical application the subject of divergent procedure;

Animated by the desire to insure henceforward a greater measure of uniformity in this respect;

Hoping that a work so important to the common welfare will meet with general approval;

Have appointed as their Plenipotentiaries, that is to say:

[Names of Plenipotentiaries.]

Who, after having communicated their full powers, found in good and due form, have agreed to make the present Declaration:

PRELIMINARY PROVISION

The Signatory Powers are agreed that the rules contained in the following chapters correspond in substance with the generally recognized principles of international law.

Chapter I. *Blockade in Time of War*

Article 1. A blockade must be limited to the ports and coasts belonging to, or occupied by, the enemy.

Art. 2. In accordance with the Declaration of Paris, 1856, a blockade, in order to be binding, must be effective—that is to say, it must be maintained by a force sufficient really to prevent access to the enemy coast.

Art. 3. The question whether a blockade is effective is a question of fact.

Art. 4. A blockade is not regarded as raised if by bad weather the blockading forces are temporarily driven off.

Art. 5. A blockade must be applied impartially to the ships of all nations.

Art. 6. The commander of a blockading force may grant to a war-ship permission to enter, and subsequently to leave, a blockaded port.

Art. 7. In circumstances of distress, acknowledged by an authority of the blockading forces, a neutral vessel may enter a place under blockade, and subsequently leave it, provided that she has neither discharged nor shipped any cargo.

Art. 8. A blockade, in order to be binding must be declared in accordance with Article 9, and notified in accordance with Articles 11 and 16.

Art. 9. A declaration of blockade is made either by the blockading Power or by the naval authorities acting in its name.

It specifies—

(1) The date when the blockade begins.

(2) The geographical limits of the coast blockaded.

(3) The delay to be allowed to neutral vessels for departure.

ART. 10. If the blockading Power, or the naval authorities acting in its name, do not establish the blockade in conformity with the provisions, which, in accordance with Article 9 (1) and (2), must be inserted in the declaration of blockade, the declaration is void, and a new declaration is necessary in order to make the blockade operative.

ART. 11. A declaration of blockade is notified—

(1) To the neutral Powers, by the blockading Power by means of a communication addressed to the Governments themselves, or to their Representatives accredited to it.

(2) To the local authorities, by the officer commanding the blockading force. These authorities will, on their part, inform, as soon as possible, the foreign consuls who exercise their functions in the port or on the coast blockaded.

ART. 12. The rules relative to the declaration and to the notification of blockade are applicable in the case in which the blockade may have been extended, or may have been reëstablished after having been raised.

ART. 13. The voluntary raising of a blockade, as also any limitation which may be introduced, must be notified in the manner prescribed by Article 11.

ART. 14. The liability of a neutral vessel to capture for breach of blockade is contingent on her knowledge, actual or presumptive, of the blockade.

ART. 15. Failing proof to the contrary, knowledge of the blockade is presumed if the vessel left a neutral port subsequently to the notification of the blockade made in sufficient time to the Power to which such port belongs.

ART. 16. If a vessel which approaches a blockaded port does not know, or cannot be presumed to know, of the blockade, the notification must be made to the vessel itself by an officer of one of the ships of the blockading force. This notification must be entered in the ship's log book, with entry of the day and hour, as also of the geographical position of the vessel at the time.

A neutral vessel which leaves a blockaded port must be allowed to pass free, if through the negligence of the officer commanding the blockading force, no declaration of blockade has been notified to the local authorities, or, if in the declaration, as notified, no delay has been indicated.

ART. 17. The seizure of neutral vessels for violation of blockade

may be made only within the radius of action of the ships of war assigned to maintain an effective blockade.

Art. 18. The blockading forces must not bar access to the ports or to the coasts of neutrals.

Art. 19. Whatever may be the ulterior destination of the ship or of her cargo, the evidence of violation of blockade is not sufficiently conclusive to authorize the seizure of the ship if she is at the time bound toward an unblockaded port.

Art. 20. A vessel which in violation of blockade has left a blockaded port or has attempted to enter the port is liable to capture so long as she is pursued by a ship of the blockading force. If the pursuit is abandoned, or if the blockade is raised, her capture can no longer be effected.

Art. 21. A vessel found guilty of breach of blockade is liable to condemnation. The cargo is also liable to condemnation, unless it is proved that at the time the goods were shipped the shipper neither knew nor could have known of the intention to violate the blockade.

Chapter II. *Contraband of War*

Art. 22. The following articles and materials are, without notice, regarded as contraband, under the name of absolute contraband:

1. Arms of all kinds, including arms for sporting purposes, and their unassembled distinctive parts.

2. Projectiles, charges, and cartridges of all kinds, and their unassembled distinctive parts.

3. Powder and explosives specially adapted for use in war.

4. Gun carriages, caissons, limbers, military wagons, field forges, and their unassembled distinctive parts.

5. Clothing and equipment of a distinctively military character.

6. All kinds of harness of a distinctively military character.

7. Saddle, draught, and pack animals suitable for use in war.

8. Articles of camp equipment and their unassembled distinctive parts.

9. Armor plates.

10. War-ships and boats and their unassembled parts specially distinctive as only suitable for use in a vessel of war.

11. Implements and apparatus made exclusively for the manufacture of munitions of war, for the manufacture or repair of arms or of military material, for use on land and sea.

ART. 23. Articles and materials which are exclusively used for war may be added to the list of absolute contraband by means of a notified declaration.

The notification is addressed to the Governments of other Powers or to their Representatives accredited to the Power which makes the declaration. A notification made after the opening of hostilities is addressed only to the neutral Powers.

ART. 24. The following articles and materials, susceptible of use in war as well as for purposes of peace, are without notice regarded as contraband of war, under the name of conditional contraband:

(1) Food.

(2) Forage and grain suitable for feeding animals.

(3) Clothing and fabrics for clothing, boots and shoes, suitable for military use.

(4) Gold and silver in coin or bullion; paper money.

(5) Vehicles of all kinds available for use in war, and their unassembled parts.

(6) Vessels, craft, and boats of all kinds, floating docks, parts of docks as also their unassembled parts.

(7) Fixed railway material and rolling stock, and material for telegraphs, radiotelegraphs and telephones.

(8) Balloons and flying machines and their unassembled distinctive parts as also their accessories, articles and materials distinctive as intended for use in connection with balloons or flying machines.

(9) Fuel; lubricants.

(10) Powder and explosives which are not specially adapted for use in war.

(11) Barbed wire as also the implements for placing and cutting the same.

(12) Horseshoes and horseshoeing materials.

(13) Harness and saddlery material.

(14) Binocular glasses, telescopes, chronometers, and all kinds of nautical instruments.

ART. 25. Articles and materials susceptible of use in war as well as for purposes of peace, and other than those enumerated in Articles 22 and 24, may be added to the list of conditional contraband by means of a declaration which must be notified in the manner provided for in the second paragraph of Article 23.

ART. 26. If a Power waives, so far as it is concerned, the right to regard as contraband of war articles and materials which are comprised

in any of the classes enumerated in Articles 22 and 24, it shall make known its intention by a declaration notified in the manner provided for in the second paragraph of Article 23.

ART. 27. Articles and materials, which are not susceptible of use in war, are not to be declared contraband of war.

ART. 28. The following articles are not to be declared contraband of war:

(1) Raw cotton, wool, silk, jute, flax, hemp, and other raw materials of the textile industries, and also yarns of the same.

(2) Nuts and oil seeds; copra.

(3) Rubber, resins, gums and lacs; hops.

(4) Raw hides, horns, bones and ivory.

(5) Natural and artificial manures, including nitrates and phosphates for agricultural purposes.

(6) Metallic ores.

(7) Earths, clays, lime, chalk, stone, including marble, bricks, slates and tiles.

(8) Chinaware and glass.

(9) Paper and materials prepared for its manufacture.

(10) Soap, paint and colors, including articles exclusively used in their manufacture, and varnishes.

(11) Bleaching powder, soda ash, caustic soda, salt cake, ammonia, sulphate of ammonia, and sulphate of copper.

(12) Agricultural, mining, textile, and printing machinery.

(13) Precious stones, semi-precious stones, pearls, mother-of-pearl, and coral.

(14) Clocks and watches, other than chronometers.

(15) Fashion and fancy goods.

(16) Feathers of all kinds, hairs, and bristles.

(17) Articles of household furniture and decorations; office furniture and accessories.

ART. 29. Neither are the following to be regarded as contraband of war:

(1) Articles and materials serving exclusively for the care of the sick and wounded. They may, nevertheless, in case of urgent military necessity and, subject to the payment of compensation, be requisitioned, if their destination is that specified in Article 30.

(2) Articles and materials intended for the use of the vessel in which they are found, as well as those for the use of her crew and passengers during the voyage.

Art. 30. Absolute contraband is liable to capture if it is shown to be destined to territory belonging to or occupied by the enemy, or to the armed forces of the enemy. It is immaterial whether the carriage of the goods is direct or entails either transhipment or transport over land.

Art. 31. Proof of the destination specified in Article 30 is complete in the following cases:

(1) When the goods are documented to be discharged in a port of the enemy, or to be delivered to his armed forces.

(2) When the vessel is to call at enemy ports only, or when she is to touch at a port of the enemy or to join his armed forces, before arriving at the neutral port for which the goods are documented.

Art. 32. The ship's papers are complete proof of the voyage of a vessel transporting absolute contraband, unless the vessel is encountered having manifestly deviated from the route which she ought to follow according to the ship's papers and being unable to justify by sufficient reason such deviation.

Art. 33. Conditional contraband is liable to capture if it is shown that it is destined for the use of the armed forces or of a government department of the enemy State, unless in this latter case the circumstances show that the articles cannot in fact be used for the purposes of the war in progress. This latter exception does not apply to a consignment coming under Article 24 (4).

Art. 34. There is presumption of the destination referred to in Article 33 if the consignment is addressed to enemy authorities, or to a merchant, established in the enemy country, and when it is well known that this merchant supplies articles and material of this kind to the enemy. The presumption is the same if the consignment is destined to a fortified place of the enemy, or to another place serving as a base for the armed forces of the enemy; this presumption, however, does not apply to the merchant-vessel herself bound for one of these places and of which vessel it is sought to show the contraband character.

Failing the above presumptions, the destination is presumed innocent.

The presumptions laid down in this Article admit proof to the contrary.

Art. 35. Conditional contraband is not liable to capture, except when on board a vessel bound for territory belonging to or occupied by the enemy, or for the armed forces of the enemy, and when it is not to be discharged at an intervening neutral port.

The ship's papers are conclusive proof both of the voyage of the vessel as also of the port of discharge of the goods, unless the vessel is encountered having manifestly deviated from the route which she ought to follow according to the ship's papers and being unable to justify by sufficient reason such deviation.

ART. 36. Notwithstanding the provisions of Article 35, if the territory of the enemy has no seaboard, conditional contraband is liable to capture if it is shown that it has the destination referred to in Article 33.

ART. 37. A vessel carrying articles liable to capture as absolute or conditional contraband may be captured on the high seas or in the territorial waters of the belligerents throughout the whole course of her voyage, even if she has the intention to touch at a port of call before reaching the hostile destination.

ART. 38. A capture is not to be made on the ground of a carriage of contraband previously accomplished and at the time completed.

ART. 39. Contraband is liable to condemnation.

ART. 40. The confiscation of the vessel carrying contraband is allowed if the contraband forms, either by value, by weight, by volume, or by freight, more than half the cargo.

ART. 41. If a vessel carrying contraband is released, the expenses incurred by the captor in the trial before the national prize court as also for the preservation and custody of the ship and cargo during the proceedings are chargeable against the ship.

ART. 42. Goods which belong to the owner of the contraband and which are on board the same vessel are liable to condemnation.

ART. 43. If a vessel is encountered at sea making a voyage in ignorance of the hostilities or of the declaration of contraband affecting her cargo, the contraband is not to be condemned except with indemnity; the vessel herself and the remainder of the cargo are exempt from condemnation and from the expenses referred to in Article 41. The case is the same if the master after becoming aware of the opening of hostilities, or of the declaration of contraband, has not yet been able to discharge the contraband.

A vessel is deemed to be aware of the state of war, or of the declaration of contraband, if she left a neutral port after there had been made in sufficient time the notification of the opening of hostilities, or of the declaration of contraband, to the power to which such port belongs. A vessel is also deemed to be aware of a state of war if she left an enemy port after the opening of hostilities.

ART. 44. A vessel stopped because carrying contraband, and not liable to condemnation on account of the proportion of contraband, may, according to circumstances, be allowed to continue her voyage if the master is ready to deliver the contraband to the belligerent ship.

The delivery of the contraband is to be entered by the captor on the log book of the vessel stopped and the master of the vessel must furnish the captor duly certified copies of all relevant papers.

The captor is at liberty to destroy the contraband which is thus delivered to him.

CHAPTER III. *Unneutral Service*

ART. 45. A neutral vessel is liable to be condemned and, in a general way, is liable to the same treatment which a neutral vessel would undergo when liable to condemnation on account of contraband of war:

(1) If she is making a voyage specially with a view to the transport of individual passengers who are embodied in the armed force of the enemy, or with a view to the transmission of information in the interest of the enemy.

(2) If, with the knowledge of the owner, of the one who charters the vessel entire, or of the master, she is transporting a military detachment of the enemy, or one or more persons who, during the voyage, lend direct assistance to the operations of the enemy.

In the cases specified in the preceding paragraphs (1) and (2), goods belonging to the owner of the vessel are likewise liable to condemnation.

The provisions of the present Article do not apply if when the vessel is encountered at sea she is unaware of the opening of hostilities, or if the master, after becoming aware of the opening of hostilities, has not been able to disembark the passengers. The vessel is deemed to know of the state of war if she left an enemy port after the opening of hostilities, or a neutral port after there had been made in sufficient time a notification of the opening of hostilities to the Power to which such port belongs.

ART. 46. A neutral vessel is liable to be condemned and, in a general way, is liable to the same treatment which she would undergo if she were a merchant-vessel of the enemy:—

(1) If she takes a direct part in the hostilities.

(2) If she is under the orders or under the control of an agent placed on board by the enemy Government.

(3) If she is chartered entire by the enemy Government.

(4) If she is at the time and exclusively either devoted to the transport of enemy troops or to the transmission of information in the interest of the enemy.

In the cases specified in the present Article, the goods belonging to the owner of the vessel are likewise liable to condemnation.

ART. 47. Any individual embodied in the armed force of the enemy and who is found on board a neutral merchant-vessel, may be made a prisoner of war, even though there be no ground for the capture of the vessel.

CHAPTER IV. *Destruction of Neutral Prizes*

ART. 48. A captured neutral vessel is not to be destroyed by the captor, but must be taken into such port as is proper in order to determine there the rights as regards the validity of the capture.

ART. 49. As an exception, a neutral vessel captured by a belligerent ship, and which would be liable to condemnation, may be destroyed if the observance of Article 48 would involve danger to the ship of war or to the success of the operations in which she is at the time engaged.

ART. 50. Before the destruction the persons on board must be placed in safety, and all the ship's papers and other documents which those interested consider relevant for the decision as to the validity of the capture must be taken on board the ship of war.

ART. 51. A captor who has destroyed a neutral vessel must, as a condition precedent to any decision upon the validity of the capture, establish in fact that he only acted in the face of an exceptional necessity such as is contemplated in Article 49. Failing to do this, he must compensate the parties interested without examination as to whether or not the capture was valid.

ART. 52. If the capture of a neutral vessel, of which the destruction has been justified, is subsequently held to be invalid, the captor must compensate those interested, in place of the restitution to which they would have been entitled.

ART. 53. If neutral goods which were not liable to condemnation have been destroyed with the vessel, the owner of such goods is entitled to compensation.

ART. 54. The captor has the right to require the giving up of, or to proceed to destroy, goods liable to condemnation found on board a vessel which herself is not liable to condemnation, provided that the

circumstances are such as, according to Article 49, justify the destruction of a vessel liable to condemnation. The captor enters the goods delivered or destroyed in the log book of the vessel stopped, and must procure from the master duly certified copies of all relevant papers. When the giving up or destruction has been completed and the formalities have been fulfilled, the master must be allowed to continue his voyage.

The provisions of Articles 51 and 52 respecting the obligations of a captor who has destroyed a neutral vessel are applicable.

Chapter V. *Transfer of Flag*

Art. 55. The transfer of an enemy vessel to a neutral flag, effected before the opening of hostilities, is valid, unless it is proved that such transfer was made in order to evade the consequences which the enemy character of the vessel would involve. There is, however, a presumption that the transfer is void if the bill of sale is not on board in case the vessel has lost her belligerent nationality less than sixty days before the opening of hostilities. Proof to the contrary is admitted.

There is absolute presumption of the validity of a transfer effected more than thirty days before the opening of hostilities if it is absolute, complete, conforms to the laws of the countries concerned, and if its effect is such that the control of the vessel and the profits of her employment do not remain in the same hands as before the transfer. If, however, the vessel lost her belligerent nationality less than sixty days before the opening of hostilities, and if the bill of sale is not on board the capture of the vessel would not give a right to compensation.

Art. 56. The transfer of an enemy vessel to a neutral flag, effected after the opening of hostilities, is void unless it is proved that such transfer was not made in order to evade the consequences which the enemy character of the vessel would involve.

There is, however, absolute presumption that a transfer is void:

(1) If the transfer has been made during a voyage or in a blockaded port.

(2) If there is a right of redemption or of reversion.

(3) If the requirements upon which the right to fly the flag depends, according to the laws of the country of the flag hoisted, have not been observed.

Chapter VI. *Enemy Character*

Art. 57. Subject to the provisions respecting the transfer of flag, the neutral or enemy character of a vessel is determined by the flag which she is entitled to fly.

The case in which a neutral vessel is engaged in a trade which is reserved in time of peace, remains outside the scope of, and is in no wise affected by this rule.

Art. 58. The neutral or enemy character of goods found on board an enemy vessel is determined by the neutral or enemy character of the owner.

Art. 59. If the neutral character of goods found on board an enemy vessel is not proven, they are presumed to be enemy goods.

Art. 60. The enemy character of goods on board an enemy vessel continues until they reach their destination, notwithstanding an intervening transfer after the opening of hostilities while the goods are being forwarded.

If, however, prior to the capture a former neutral owner exercises, on the bankruptcy of a present enemy owner, a legal right to recover the goods, they regain their neutral character.

Chapter VII. *Convoy*

Art. 61. Neutral vessels under convoy of their national flag are exempt from search. The commander of a convoy gives, in writing, at the request of the commander of a belligerent ship of war, all information as to the character of the vessels and their cargoes, which could be obtained by visit and search.

Art. 62. If the commander of the belligerent ship of war has reason to suspect that the confidence of the commander of the convoy has been abused, he communicates his suspicions to him. In such a case it is for the commander of the convoy alone to conduct an investigation. He must state the result of such investigation in a report, of which a copy is furnished to the officer of the ship of war. If, in the opinion of the commander of the convoy, the facts thus stated justify the capture of one or more vessels, the protection of the convoy must be withdrawn from such vessels.

Chapter VIII. *Resistance to Search*

Art. 63. Forcible resistance to the legitimate exercise of the right of stoppage, visit and search, and capture, involves in all cases the condemnation of the vessel. The cargo is liable to the same treatment which the cargo of an enemy vessel would undergo. Goods belonging to the master or owner of the vessel are regarded as enemy goods.

Chapter IX. *Compensation*

Art. 64. If the capture of a vessel or of goods is not upheld by the prize court, or if without being brought to judgment the captured vessel is released, those interested have the right to compensation, unless there were sufficient reasons for capturing the vessel or goods.

Final Provisions

Art. 65. The provisions of the present Declaration form an indivisible whole.

Art. 66. The Signatory Powers undertake to secure the reciprocal observance of the rules contained in this Declaration in case of a war in which the belligerents are all parties to this Declaration. They will therefore issue the necessary instructions to their authorities and to their armed forces, and will take the measures which are proper in order to guarantee the application of the Declaration by their Courts and more particularly by their prize courts.

Art. 67. The present Declaration shall be ratified as soon as possible.

The ratifications shall be deposited in London.

The first deposit of ratifications shall be recorded in a Protocol signed by the Representatives of the Powers taking part therein, and by His Britannic Majesty's Principal Secretary of State for Foreign Affairs.

The subsequent deposits of ratifications shall be made by means of a written notification addressed to the British Government, and accompanied by the instrument of ratification.

A duly certified copy of the Protocol relating to the first deposit of ratifications, and of the notifications mentioned in the preceding paragraph as well as of the instruments of ratification which accompany them, shall be immediately sent by the British Government, through the diplomatic channel, to the Signatory Powers. The said Govern-

ment shall, in the cases contemplated in the preceding paragraph, inform them at the same time of the date on which it received the notification.

ART. 68. The present Declaration shall take effect, in the case of the Powers which were parties to the first deposit of ratifications, sixty days after the date of the Protocol recording such deposit, and, in the case of the Powers which shall ratify subsequently, sixty days after the notification of their ratification shall have been received by the British Government.

ART. 69. If it happens that one of the Signatory Powers wishes to denounce the present Declaration, such denunciation can only be made to take effect at the end of a period of twelve years, beginning sixty days after the first deposit of ratifications, and, after that time, at the end of successive periods of six years, of which the first will begin at the end of the period of twelve years.

Such denunciation must be notified in writing, at least one year in advance, to the British Government, which shall inform all the other Powers.

It will only operate in respect of the Power which shall have made the notification.

ART. 70. The Powers represented at the London Naval Conference attach particular value to the general recognition of the rules which they have adopted, and express the hope that the Powers which were not represented will accede to the present Declaration. They request the British Government to invite them to do so.

A Power which desires to accede notifies its intention in writing to the British Government, in transmitting the act of accession, which will be deposited in the archives of the said Government.

The said Government shall forthwith transmit to all the other Powers a duly certified copy of the notification, as also of the act of accession, stating the date on which it received the notification. The accession takes effect sixty days after such date.

The position of the acceding Powers shall be in all matters concerning this Declaration similar to the position of the Signatory Powers.

ART. 71. The present Declaration, which shall bear the date of the 26th February, 1909, may be signed in London until the 30th June, 1909, by the Plenipotentiaries of the Powers represented at the Naval Conference.

In faith whereof the Plenipotentiaries have signed the present Declaration, and have thereto affixed their seals.

Done at London, the twenty-sixth day of February, one thousand nine hundred and nine, in a single original, which shall remain deposited in the archives of the British Government, and of which duly certified copies shall be sent through the diplomatic channel to the Powers represented at the Naval Conference.

APPENDIX XII

CONFERENCE ON THE LIMITATION OF ARMAMENT

Treaty in Relation to the Use of Submarines and Noxious Gases in Warfare

The United States of America, the British Empire, France, Italy and Japan, hereinafter referred to as the Signatory Powers, desiring to make more effective the rules adopted by civilized nations for the protection of the lives of neutrals and noncombatants at sea in time of war, and to prevent the use in war of noxious gases and chemicals, have determined to conclude a Treaty to this effect, and have appointed as their Plenipotentiaries:

[Names of Plenipotentiaries.]

Who, having communicated their Full Powers, found in good and due form, have agreed as follows:

Article 1. The Signatory Powers declare that among the rules adopted by civilized nations for the protection of the lives of neutrals and noncombatants at sea in time of war, the following are to be deemed an established part of international law;

(1) A merchant vessel must be ordered to submit to visit and search to determine its character before it can be seized.

A merchant vessel must not be attacked unless it refuse to submit to visit and search after warning, or to proceed as directed after seizure.

A merchant vessel must not be destroyed unless the crew and passengers have been first placed in safety.

(2) Belligerent submarines are not under any circumstances exempt from the universal rules above stated; and if a submarine can not capture a merchant vessel in conformity with these rules the existing law of nations requires it to desist from attack and from seizure and to permit the merchant vessel to proceed unmolested.

Art. 2. The Signatory Powers invite all other civilized Powers to express their assent to the foregoing statement of established law so that there may be a clear understanding throughout the world of the standards of conduct by which the public opinion of the world is to pass judgment upon future belligerents.

ART. 3. The Signatory Powers, desiring to insure the enforcement of the humane rules of existing law declared by them with respect to attacks upon and the seizure and destruction of merchant ships, further declare that any person in the service of any Power who shall violate any of those rules, whether or not such person is under orders of a governmental superior, shall be deemed to have violated the laws of war and shall be liable to trial and punishment as if for an act of piracy and may be brought to trial before the civil or military authorities of any Power within the jurisdiction of which he may be found.

ART. 4. The Signatory Powers recognize the practical impossibility of using submarines as commerce destroyers without violating, as they were violated in the recent war of 1914–1918, the requirements universally accepted by civilized nations for the protection of the lives of neutrals and noncombatants, and to the end that the prohibition of the use of submarines as commerce destroyers shall be universally accepted as a part of the law of nations they now accept that prohibition as henceforth binding as between themselves and they invite all other nations to adhere thereto.

ART. 5. The use in war of asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices, having been justly condemned by the general opinion of the civilized world and a prohibition of such use having been declared in treaties to which a majority of the civilized Powers are parties,

The Signatory Powers, to the end that this prohibition shall be universally accepted as a part of international law binding alike the conscience and practice of nations, declare their assent to such prohibition, agree to be bound thereby as between themselves and invite all other civilized nations to adhere thereto.

ART. 6. The present Treaty shall be ratified as soon as possible in accordance with the constitutional methods of the Signatory Powers and shall take effect on the deposit of all the ratifications, which shall take place at Washington.

The Government of the United States will transmit to all the Signatory Powers a certified copy of the procès-verbal of the deposit of ratifications.

The present Treaty, of which the French and English texts are both authentic, shall remain deposited in the Archives of the Government of the United States, and duly certified copies thereof will be transmitted by that Government to each of the Signatory Powers.

ART. 7. The Government of the United States will further trans-

mit to each of the Non-Signatory Powers a duly certified copy of the present Treaty and invite its adherence thereto.

Any Non-Signatory Power may adhere to the present Treaty by communicating an Instrument of Adherence to the Government of the United States, which will thereupon transmit to each of the Signatory and Adhering Powers a certified copy of each Instrument of Adherence.

In faith whereof, the above named Plenipotentiaries have signed the present Treaty.

Done at the City of Washington, the sixth day of February, one thousand nine hundred and twenty-two.

APPENDIX XIII

TREATY OF PEACE, JUNE 28, 1919

The Covenant of the League of Nations

PART I

The High Contracting Parties,

In order to promote international co-operation and to achieve international peace and security

by the acceptance of obligations not to resort to war,

by the prescription of open, just and honourable relations between nations,

by the firm establishment of the understandings of international law as the actual rule of conduct among Governments, and

by the maintenance of justice and a scrupulous respect for all treaty obligations in the dealings of organised peoples with one another,

Agree to this Covenant of the League of Nations.

Article 1. The original Members of the League of Nations shall be those of the Signatories which are named in the Annex to this Covenant and also such of those other States named in the Annex as shall accede without reservation to this Covenant. Such accession shall be effected by a Declaration deposited with the Secretariat within two months of the coming into force of the Covenant. Notice thereof shall be sent to all other Members of the League.

Any fully self-governing State, Dominion or Colony not named in the Annex may become a Member of the League if its admission is agreed to by two-thirds of the Assembly, provided that it shall give effective guarantees of its sincere intention to observe its international obligations, and shall accept such regulations as may be prescribed by the League in regard to its military, naval and air forces and armaments.

Any Member of the League may, after two years' notice of its intention so to do, withdraw from the League, provided that all its international obligations and all its obligations under this Covenant shall have been fulfilled at the time of its withdrawal.

ART. 2. The action of the League under this Covenant shall be effected through the instrumentality of an Assembly and of a Council, with a permanent Secretariat.

ART. 3. The Assembly shall consist of Representatives of the Members of the League.

The Assembly shall meet at stated intervals and from time to time as occasion may require at the Seat of the League or at such other place as may be decided upon.

The Assembly may deal at its meetings with any matter within the sphere of action of the League or affecting the peace of the world.

At meetings of the Assembly each Member of the League shall have one vote, and may have not more than three Representatives.

ART. 4. The Council shall consist of Representatives of the Principal Allied and Associated Powers, together with Representatives of four other Members of the League. These four Members of the League shall be selected by the Assembly from time to time in its discretion. Until the appointment of the Representatives of the four Members of the League first selected by the Assembly, Representatives of Belgium, Brazil, Spain and Greece shall be members of the Council.

With the approval of the majority of the Assembly, the Council may name additional Members of the League whose Representatives shall always be members of the Council; the Council with like approval may increase the number of Members of the League to be selected by the Assembly for representation on the Council.

The Council shall meet from time to time as occasion may require, and at least once a year, at the Seat of the League, or at such other place as may be decided upon.

The Council may deal at its meetings with any matter within the sphere of action of the League or affecting the peace of the world.

Any member of the League not represented on the Council shall be invited to send a Representative to sit as a member at any meeting of the Council during the consideration of matters specially affecting the interests of that Member of the League.

At meetings of the Council, each Member of the League represented on the Council shall have one vote, and may have not more than one Representative.

ART. 5. Except where otherwise expressly provided in this Covenant or by the terms of the present Treaty, decisions at any meeting of the Assembly or of the Council shall require the agreement of all the Members of the League represented at the meeting.

All matters of procedure at meetings of the Assembly or of the Council, including the appointment of Committees to investigate particular matters, shall be regulated by the Assembly or by the Council and may be decided by a majority of the Members of the League represented at the meeting.

The first meeting of the Assembly and the first meeting of the Council shall be summoned by the President of the United States of America.

ART. 6. The permanent Secretariat shall be established at the Seat of the League. The Secretariat shall comprise a Secretary General and such secretaries and staff as may be required.

The first Secretary General shall be the person named in the Annex; thereafter the Secretary General shall be appointed by the Council with the approval of the majority of the Assembly.

The secretaries and staff of the Secretariat shall be appointed by the Secretary General with the approval of the Council.

The Secretary General shall act in that capacity at all meetings of the Assembly and of the Council.

The expenses of the Secretariat shall be borne by the Members of the League in accordance with the apportionment of the expenses of the International Bureau of the Universal Postal Union.

ART. 7. The Seat of the League is established at Geneva.

The Council may at any time decide that the Seat of the League shall be established elsewhere.

All positions under or in connection with the League, including the Secretariat, shall be open equally to men and women.

Representatives of the Members of the League and officials of the League when engaged on the business of the League shall enjoy diplomatic privileges and immunities.

The buildings and other property occupied by the League or its officials or by Representatives attending its meetings shall be inviolable.

ART. 8. The Members of the League recognise that the maintenance of peace requires the reduction of national armaments to the lowest point consistent with national safety and the enforcement by common action of international obligations.

The Council, taking account of the geographical situation and circumstances of each State, shall formulate plans for such reduction for the consideration and action of the several Governments.

Such plans shall be subject to reconsideration and revision at least every ten years.

After these plans shall have been adopted by the several Governments, the limits of armaments therein fixed shall not be exceeded without the concurrence of the Council.

The Members of the League agree that the manufacture by private enterprise of munitions and implements of war is open to grave objections. The Council shall advise how the evil effects attendant upon such manufacture can be prevented, due regard being had to the necessities of those Members of the League which are not able to manufacture the munitions and implements of war necessary for their safety.

The Members of the League undertake to interchange full and frank information as to the scale of their armaments, their military, naval and air programmes and the condition of such of their industries as are adaptable to war-like purposes.

ART. 9. A permanent Commission shall be constituted to advise the Council on the execution of the provisions of Articles 1 and 8 and on military, naval and air questions generally.

ART. 10. The Members of the League undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League. In case of any such aggression or in case of any threat or danger of such aggression the Council shall advise upon the means by which this obligation shall be fulfilled.

ART. 11. Any war or threat of war, whether immediately affecting any of the Members of the League or not, is hereby declared a matter of concern to the whole League, and the League shall take any action that may be deemed wise and effectual to safeguard the peace of nations. In case any such emergency should arise the Secretary General shall on the request of any Member of the League forthwith summon a meeting of the Council.

It is also declared to be the friendly right of each Member of the League to bring to the attention of the Assembly or of the Council any circumstance whatever affecting international relations which threatens to disturb international peace or the good understanding between nations upon which peace depends.

ART. 12. The Members of the League agree that if there should arise between them any dispute likely to lead to a rupture, they will submit the matter either to arbitration or to inquiry by the Council, and they agree in no case to resort to war until three months after the award by the arbitrators or the report by the Council.

In any case under this Article the award of the arbitrators shall be made within a reasonable time, and the report of the Council shall be made within six months after the submission of the dispute.

Art. 13. The Members of the League agree that whenever any dispute shall arise between them which they recognise to be suitable for submission to arbitration and which cannot be satisfactorily settled by diplomacy, they will submit the whole subject-matter to arbitration.

Disputes as to the interpretation of a treaty, as to any question of international law, as to the existence of any fact which if established would constitute a breach of any international obligation, or as to the extent and nature of the reparation to be made for any such breach, are declared to be among those which are generally suitable for submission to arbitration.

For the consideration of any such dispute the court of arbitration to which the case is referred shall be the Court agreed on by the parties to the dispute or stipulated in any convention existing between them.

The Members of the League agree that they will carry out in full good faith any award that may be rendered, and that they will not resort to war against a Member of the League which complies therewith. In the event of any failure to carry out such an award, the Council shall propose what steps should be taken to give effect thereto.

Art. 14. The Council shall formulate and submit to the Members of the League for adoption plans for the establishment of a Permanent Court of International Justice. The Court shall be competent to hear and determine any dispute of an international character which the parties thereto submit to it. The Court may also give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly.

Art. 15. If there should arise between Members of the League any dispute likely to lead to a rupture, which is not submitted to arbitration in accordance with Article 13, the Members of the League agree that they will submit the matter to the Council. Any party to the dispute may effect such submission by giving notice of the existence of the dispute to the Secretary General, who will make all necessary arrangements for a full investigation and consideration thereof.

For this purpose the parties to the dispute will communicate to the Secretary General, as promptly as possible, statements of their case with all the relevant facts and papers, and the Council may forthwith direct the publication thereof.

The Council shall endeavour to effect a settlement of the dispute, and if such efforts are successful, a statement shall be made public giving such facts and explanations regarding the dispute and the terms of settlement thereof as the Council may deem appropriate.

If the dispute is not thus settled, the Council either unanimously or by a majority vote shall make and publish a report containing a statement of the facts of the dispute and the recommendations which are deemed just and proper in regard thereto.

Any Member of the League represented on the Council may make public a statement of the facts of the dispute and of its conclusions regarding the same.

If a report by the Council is unanimously agreed to by the members thereof other than the Representatives of one or more of the parties to the dispute, the Members of the League agree that they will not go to war with any party to the dispute which complies with the recommendations of the report.

If the Council fails to reach a report which is unanimously agreed to by the members thereof, other than the Representatives of one or more of the parties to the dispute, the Members of the League reserve to themselves the right to take such action as they shall consider necessary for the maintenance of right and justice.

If the dispute between the parties is claimed by one of them, and is found by the Council, to arise out of a matter which by international law is solely within the domestic jurisdiction of that party, the Council shall so report, and shall make no recommendation as to its settlement.

The Council may in any case under this Article refer the dispute to the Assembly. The dispute shall be so referred at the request of either party to the dispute, provided that such request be made within fourteen days after the submission of the dispute to the Council.

In any case referred to the Assembly, all the provisions of this Article and of Article 12 relating to the action and powers of the Council shall apply to the action and powers of the Assembly, provided that a report made by the Assembly, if concurred in by the Representatives of those Members of the League represented on the Council and of a majority of the other Members of the League, exclusive in each case of the Representatives of the parties to the dispute, shall have the same force as a report by the Council concurred in by all the members thereof other than the Representatives of one or more of the parties to the dispute.

Art. 16. Should any Member of the League resort to war in disregard of its covenants under Articles 12, 13 or 15, it shall *ipso facto* be deemed to have committed an act of war against all other Members of the League, which hereby undertake immediately to subject it to the severance of all trade or financial relations, the prohibition of all intercourse between their nationals and the nationals of the covenant-breaking State, and the prevention of all financial, commercial or personal intercourse between the nationals of the covenant-breaking State and the nationals of any other State, whether a Member of the League or not.

It shall be the duty of the Council in such case to recommend to the several governments concerned what effective military, naval or air force the Members of the League shall severally contribute to the armed forces to be used to protect the covenants of the League.

The Members of the League agree, further, that they will mutually support one another in the financial and economic measures which are taken under this Article, in order to minimise the loss and inconvenience resulting from the above measures, and that they will mutually support one another in resisting any special measures aimed at one of their number by the covenant-breaking State, and that they will take the necessary steps to afford passage through their territory to the forces of any of the Members of the League which are co-operating to protect the covenants of the League.

Any Member of the League which has violated any covenant of the League may be declared to be no longer a Member of the League by a vote of the Council concurred in by the Representatives of all the other Members of the League represented thereon.

Art. 17. In the event of a dispute between a Member of the League and a State which is not a Member of the League, or between States not Members of the League, the State or States not Members of the League shall be invited to accept the obligations of membership in the League for the purposes of such dispute, upon such conditions as the Council may deem just. If such invitation is accepted, the provisions of Articles 12 to 16 inclusive shall be applied with such modifications as may be deemed necessary by the Council.

Upon such invitation being given the Council shall immediately institute an inquiry into the circumstances of the dispute and recommend such action as may seem best and most effectual in the circumstances.

If a State so invited shall refuse to accept the obligations of member-

ship in the League for the purposes of such dispute, and shall resort to war against a Member of the League, the provisions of Article 16 shall be applicable as against the State taking such action.

If both parties to the dispute when so invited refuse to accept the obligations of membership in the League for the purposes of such dispute, the Council may take such measures and make such recommendations as will prevent hostilities and will result in the settlement of the dispute.

ART. 18. Every treaty or international engagement entered into hereafter by any Member of the League shall be forthwith registered with the Secretariat and shall as soon as possible be published by it. No such treaty or international engagement shall be binding until so registered.

ART. 19. The Assembly may from time to time advise the reconsideration by Members of the League of treaties which have become inapplicable and the consideration of international conditions whose continuance might endanger the peace of the world.

ART. 20. The Members of the League severally agree that this Covenant is accepted as abrogating all obligations or understandings *inter se* which are inconsistent with the terms thereof, and solemnly undertake that they will not hereafter enter into any engagements inconsistent with the terms thereof.

In case any Member of the League shall, before becoming a Member of the League, have undertaken any obligations inconsistent with the terms of this Covenant, it shall be the duty of such Member to take immediate steps to procure its release from such obligations.

ART. 21. Nothing in this Covenant shall be deemed to affect the validity of international engagements, such as treaties of arbitration or regional understandings like the Monroe doctrine, for securing the maintenance of peace.

ART. 22. To those colonies and territories which as a consequence of the late war have ceased to be under the sovereignty of the States which formerly governed them and which are inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world, there should be applied the principle that the well-being and development of such peoples form a sacred trust of civilisation and that securities for the performance of this trust should be embodied in this Covenant.

The best method of giving practical effect to this principle is that the tutelage of such peoples should be entrusted to advanced nations

who by reason of their resources, their experience or their geographical position can best undertake this responsibility, and who are willing to accept it, and that this tutelage should be exercised by them as Mandatories on behalf of the League.

The character of the mandate must differ according to the stage of the development of the people, the geographical situation of the territory, its economic conditions and other similar circumstances.

Certain communities formerly belonging to the Turkish Empire have reached a stage of development where their existence as independent nations can be provisionally recognised subject to the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone. The wishes of these communities must be a principal consideration in the selection of the Mandatory.

Other peoples, especially those of Central Africa, are at such a stage that the Mandatory must be responsible for the administration of the territory under conditions which will guarantee freedom of conscience and religion, subject only to the maintenance of public order and morals, the prohibition of abuses such as the slave trade, the arms traffic and the liquor traffic, and the prevention of the establishment of fortifications or military and naval bases and of military training of the natives for other than police purposes and the defence of territory, and will also secure equal opportunities for the trade and commerce of other Members of the League.

There are territories, such as South-West Africa and certain of the South Pacific Islands, which, owing to the sparseness of their population, or their small size, or their remoteness from the centres of civilisation, or their geographical contiguity to the territory of the Mandatory, and other circumstances, can be best administered under the laws of the Mandatory as integral portions of its territory, subject to the safeguards above mentioned in the interests of the indigenous population.

In every case of mandate, the Mandatory shall render to the Council an annual report in reference to the territory committed to its charge.

The degree of authority, control, or administration to be exercised by the Mandatory shall, if not previously agreed upon by the Members of the League, be explicitly defined in each case by the Council.

A permanent Commission shall be constituted to receive and examine the annual reports of the Mandatories and to advise the Council on all matters relating to the observance of the mandates.

ART. 23. Subject to and in accordance with the provisions of inter-

national conventions existing or hereafter to be agreed upon, the Members of the League:

(*a*) will endeavour to secure and maintain fair and humane conditions of labour for men, women, and children, both in their own countries and in all countries to which their commercial and industrial relations extend, and for that purpose will establish and maintain the necessary international organizations;

(*b*) undertake to secure just treatment of the native inhabitants of territories under their control;

(*c*) will entrust the League with the general supervision over the execution of agreements with regard to the traffic in women and children, and the traffic in opium and other dangerous drugs;

(*d*) will entrust the League with the general supervision of the trade in arms and ammunition with the countries in which the control of this traffic is necessary in the common interest;

(*e*) will make provision to secure and maintain freedom of communications and of transit and equitable treatment for the commerce of all Members of the League. In this connection, the special necessities of the regions devastated during the war of 1914–1918 shall be borne in mind;

(*f*) will endeavour to take steps in matters of international concern for the prevention and control of disease.

ART. 24. There shall be placed under the direction of the League all international bureaus already established by general treaties if the parties to such treaties consent. All such international bureaus and all commissions for the regulation of matters of international interest hereafter constituted shall be placed under the direction of the League.

In all matters of international interest which are regulated by general conventions but which are not placed under the control of international bureaus or commissions, the Secretariat of the League shall, subject to the consent of the Council and if desired by the parties, collect and distribute all relevant information and shall render any other assistance which may be necessary or desirable.

The Council may include as part of the expenses of the Secretariat the expenses of any bureau or commission which is placed under the direction of the League.

ART. 25. The Members of the League agree to encourage and promote the establishment and co-operation of duly authorized voluntary national Red Cross organizations having as purposes the improvement of health, the prevention of disease and the mitigation of suffering throughout the world.

ART. 26. Amendments to this Covenant will take effect when ratified by the Members of the League whose Representatives compose the Council and by a majority of the Members of the League whose Representatives compose the Assembly.

No such amendment shall bind any Member of the League which signifies its dissent therefrom, but in that case it shall cease to be a Member of the League.

ANNEX

I. ORIGINAL MEMBERS OF THE LEAGUE OF NATIONS SIGNATORIES OF THE TREATY OF PEACE

UNITED STATES OF AMERICA.
BELGIUM.
BOLIVIA.
BRAZIL.
BRITISH EMPIRE.
CANADA.
AUSTRALIA.
SOUTH AFRICA.
NEW ZEALAND.
INDIA.
CHINA.
CUBA.
ECUADOR.
FRANCE.
GREECE.
GUATEMALA.
HAITI.
HEDJAZ.
HONDURAS.
ITALY.
JAPAN.
LIBERIA.
NICARAGUA.
PANAMA.
PERU.
POLAND.
PORTUGAL.
ROUMANIA.
SERB-CROAT-SLOVENE STATE.
SIAM.
CZECHO-SLOVAKIA.
URUGUAY.

STATES INVITED TO ACCEDE TO THE COVENANT

ARGENTINE REPUBLIC.
CHILI.
COLOMBIA.
PERSIA.
SALVADOR.
SPAIN.

DENMARK.
NETHERLANDS.
NORWAY.
PARAGUAY.
SWEDEN.
SWITZERLAND.
VENEZUELA.

II. FIRST SECRETARY GENERAL OF THE LEAGUE OF NATIONS

The Honourable Sir James Eric DRUMMOND, K. C. M. G., C. B.

APPENDIX XIV

PERMANENT COURT OF INTERNATIONAL JUSTICE

(Statute approved by Assembly of League of Nations, December 13, 1920.)

Statute for the Permanent Court of International Justice provided for by Article 14 of the Covenant of the League of Nations

Article 1. A Permanent Court of International Justice is hereby established, in accordance with Article 14 of the Covenant of the League of Nations. This Court shall be in addition to the Court of Arbitration organized by the Conventions of The Hague of 1899 and 1907, and to the special Tribunals of Arbitration to which States are always at liberty to submit their disputes for settlement.

CHAPTER I. — Organization of the Court

Art. 2. The Permanent Court of International Justice shall be composed of a body of independent judges, elected regardless of their nationality from among persons of high moral character, who possess the qualifications required in their respective countries for appointment to the highest judicial offices, or are jurisconsults of recognized competence in international law.

Art. 3. The Court shall consist of fifteen members: eleven judges and four deputy-judges. The number of judges and deputy-judges may hereafter be increased by the Assembly, upon the proposal of the Council of the League of Nations, to a total of fifteen judges and six deputy-judges.

Art. 4. The members of the Court shall be elected by the Assembly and by the Council from a list of persons nominated by the national groups in the Court of Arbitration, in accordance with the following provisions.

In the case of Members of the League of Nations not represented in the Permanent Court of Arbitration, the lists of candidates shall

be drawn up by national groups appointed for this purpose by their Governments under the same conditions as those prescribed for members of the Permanent Court of Arbitration by Article 44 of the Convention of The Hague of 1907 for the pacific settlement of international disputes.

ART. 5. At least three months before the date of the election, the Secretary General of the League of Nations shall address a written request to the Members of the Court of Arbitration belonging to the States mentioned in the Annex to the Covenant or to the States which join the League subsequently, and to the persons appointed under paragraph 2 of Article 4, inviting them to undertake, within a given time, by national groups, the nomination of persons in a position to accept the duties of a member of the Court.

No group may nominate more than four persons, not more than two of whom shall be of their own nationality. In no case must the number of candidates nominated be more than double the number of seats to be filled.

ART. 6. Before making these nominations, each national group is recommended to consult its Highest Court of Justice, its Legal Faculties and Schools of Law, and its National Academies and national sections of International Academies devoted to the study of Law.

ART. 7. The Secretary General of the League of Nations shall prepare a list in alphabetical order of all the persons thus nominated. Save as provided in Article 12, paragraph 2, these shall be the only persons eligible for appointment.

The Secretary General shall submit this list to the Assembly and to the Council.

ART. 8. The Assembly and the Council shall proceed independently of one another to elect, firstly the judges, then the deputy-judges.

ART. 9. At every election, the electors shall bear in mind that not only should all the persons appointed as members of the Court possess the qualifications required, but the whole body also should represent the main forms of civilization and the principal legal systems of the world.

ART. 10. Those candidates who obtain an absolute majority of votes in the Assembly and in the Council shall be considered as elected.

In the event of more than one national of the same Member of the League being elected by the votes of both the Assembly and the Council, the eldest of these only shall be considered as elected.

ART. 11. If, after the first meeting held for the purpose of the election, one or more seats remain to be filled, a second and, if necessary, a third meeting shall take place.

ART. 12. If, after the third meeting, one or more seats still remain unfilled, a joint conference consisting of six members, three appointed by the Assembly and three by the Council, may be formed, at any time, at the request of either the Assembly or the Council, for the purpose of choosing one name for each seat still vacant, to submit to the Assembly and the Council for their respective acceptance.

If the Conference is unanimously agreed upon any person who fulfils the required conditions, he may be included in its list, even though he was not included in the list of nominations referred to in Articles 4 and 5.

If the joint conference is satisfied that it will not be successful in procuring an election, those members of the Court who have already been appointed shall, within a period to be fixed by the Council, proceed to fill the vacant seats by selection from among those candidates who have obtained votes either in the Assembly or in the Council.

In the event of an equality of votes among the judges, the eldest judge shall have a casting vote.

ART. 13. The members of the Court shall be elected for nine years. They may be re-elected.

They shall continue to discharge their duties until their places have been filled. Though replaced, they shall finish any cases which they may have begun.

ART. 14. Vacancies which may occur shall be filled by the same method as that laid down for the first election. A member of the Court elected to replace a member whose period of appointment had not expired will hold the appointment for the remainder of his predecessor's term.

ART. 15. Deputy-judges shall be called upon to sit in the order laid down in a list.

This list shall be prepared by the Court and shall have regard firstly to priority of election and secondly to age.

ART. 16. The ordinary Members of the Court may not exercise any political or administrative function. This provision does not apply to the deputy-judges except when performing their duties on the Court.

Any doubt on this point is settled by the decision of the Court.

ART. 17. No member of the Court can act as agent, counsel or advocate in any case of an international nature. This provision only

applies to the deputy-judges as regards cases in which they are called upon to exercise their functions on the Court.

No member may participate in the decision of any case in which he has previously taken an active part, as agent, counsel or advocate for one of the contesting parties, or as a Member of a national or international Court, or of a Commission of inquiry, or in any other capacity.

Any doubt on this point is settled by the decision of the Court.

ART. 18. A member of the Court can not be dismissed unless, in the unanimous opinion of the other members, he has ceased to fulfil the required conditions.

Formal notification thereof shall be made to the Secretary General of the League of Nations, by the Registrar.

This notification makes the place vacant.

ART. 19. The members of the Court, when engaged on the business of the Court, shall enjoy diplomatic privileges and immunities.

ART. 20. Every member of the Court shall, before taking up his duties, make a solemn declaration in open Court that he will exercise his powers impartially and conscientiously.

ART. 21. The Court shall elect its President and Vice-President for three years; they may be re-elected.

It shall appoint its Registrar.

The duties of Registrar of the Court shall not be deemed incompatible with those of Secretary General of the Permanent Court of Arbitration.

ART. 22. The seat of the Court shall be established at The Hague.

The President and Registrar shall reside at the seat of the Court.

ART. 23. A session of the Court shall be held every year.

Unless otherwise provided by rules of Court, this session shall begin on the 15th of June, and shall continue for so long as may be deemed necessary to finish the cases on the list.

The President may summon an extraordinary session of the Court whenever necessary.

ART. 24. If, for some special reason, a member of the Court considers that he should not take part in the decision of a particular case he should so inform the President.

If the President considers that for some special reason one of the members of the Court should not sit on a particular case, he shall give him notice accordingly.

If in any such case the member of the Court and the President disagree, the matter shall be settled by the decision of the Court.

ART. 25. The full Court shall sit except when it is expressly provided otherwise.

If eleven judges can not be present, the number shall be made up by calling on deputy-judges to sit.

If, however, eleven judges are not available, a quorum of nine judges shall suffice to constitute the Court.

ART. 26. Labor cases, particularly cases referred to in Part XIII (Labor) of the Treaty of Versailles and the corresponding portion of the other Treaties of Peace, shall be heard and determined by the Court under the following conditions:

The Court will appoint every three years a special chamber of five judges, selected so far as possible with due regard to the provisions of Article 9. In addition, two judges shall be selected for the purpose of replacing a judge who finds it impossible to sit. If the parties so demand, cases will be heard and determined by this chamber. In the absence of any such demand, the Court will sit with the number of judges provided for in Article 25. On all occasions the judges will be assisted by four technical assessors sitting with them, but without the right to vote, and chosen with a view to insuring a just representation of the competing interests.

If there is a national of one only of the parties sitting as a judge in the chamber referred to in the preceding paragraph, the President will invite one of the other judges to retire in favor of a judge chosen by the other party in accordance with Article 31.

The technical assessors shall be chosen for each particular case in accordance with rules of procedure under Article 30 from a list of "Assessors for Labor cases" composed of two persons nominated by each Member of the League of Nations and an equivalent number nominated by the Governing Body of the Labor Office. The Governing Body will nominate, as to one half, representatives of the workers, and as to one half, representatives of employers from the list referred to in Article 412 of the Treaty of Versailles and the corresponding Articles of the other Treaties of Peace.

In Labor cases the International Labor Office shall be at liberty to furnish the Court with all relevant information, and for this purpose the Director of that Office shall receive copies of all the written proceedings.

ART. 27. Cases relating to transit and communications, particularly cases referred to in Part XII (Ports, Waterways and Railways) of the Treaty of Versailles and the corresponding portions of

the other Treaties of Peace shall be heard and determined by the Court under the following conditions:

The Court will appoint every three years a special chamber of five judges, selected so far as possible with due regard to the provisions of Article 9. In addition, two judges shall be selected for the purpose of replacing a judge who finds it impossible to sit. If the parties so demand, cases will be heard and determined by this chamber. In the absence of any such demand, the Court will sit with the number of judges provided for in Article 25. When desired by the parties or decided by the Court, the judges will be assisted by four technical assessors sitting with them, but without the right to vote.

If there is a national of one only of the parties sitting as a judge in the chamber referred to in the preceding paragraph, the President will invite one of the other judges to retire in favor of a judge chosen by the other party in accordance with Article 31.

The technical assessors shall be chosen for each particular case in accordance with rules of procedure under Article 30 from a list of "Assessors for Transit and Communications Cases" composed of two persons nominated by each Member of the League of Nations.

ART. 28. The special chambers provided for in Articles 26 and 27 may, with the consent of the parties to the dispute, sit elsewhere than at The Hague.

ART. 29. With a view to the speedy dispatch of business, the Court shall form annually a chamber composed of three judges who, at the request of the contesting parties, may hear and determine cases by summary procedure.

ART. 30. The Court shall frame rules for regulating its procedure. In particular, it shall lay down rules for summary procedure.

ART. 31. Judges of the nationality of each contesting party shall retain their right to sit in the case before the Court.

If the Court includes upon the Bench a judge of the nationality of one of the parties only, the other party may select from among the deputy-judges a judge of its nationality, if there be one. If there should not be one, the party may choose a judge, preferably from among those persons who have been nominated as candidates as provided in Articles 4 and 5.

If the Court includes upon the Bench no judge of the nationality of the contesting parties, each of these may proceed to select or choose a judge as provided in the preceding paragraph.

Should there be several parties in the same interest, they shall, for

the purpose of the preceding provisions, be reckoned as one party only. Any doubt upon this point is settled by the decision of the Court.

Judges selected or chosen as laid down in paragraphs 2 and 3 of this Article shall fulfil the conditions required by Articles 2, 16, 17. 20, 24, of this Statute. They shall take part in the decision on an equal footing with their colleagues.

ART. 32. The judges shall receive an annual indemnity to be determined by the Assembly of the League of Nations upon the proposal of the Council. This indemnity must not be decreased during the period of a judge's appointment.

The President shall receive a special grant for his period of office to be fixed in the same way.

The Vice-President, judges and deputy-judges shall receive a grant for the actual performance of their duties, to be fixed in the same way.

Traveling expenses incurred in the performance of their duties shall be refunded to judges and deputy-judges who do not reside at the seat of the Court.

Grants due to judges selected or chosen as provided in Article 31 shall be determined in the same way.

The salary of the Registrar shall be decided by the Council upon the proposal of the Court.

The Assembly of the League of Nations shall lay down, on the proposal of the Council, a special regulation fixing the conditions under which retiring pensions may be given to the personnel of the Court.

ART. 33. The expenses of the Court shall be borne by the League of Nations, in such a manner as shall be decided by the Assembly upon the proposal of the Council.

CHAPTER II. — COMPETENCE OF THE COURT

ART. 34. Only States or Members of the League of Nations can be parties in cases before the Court.

ART. 35. The Court shall be open to the Members of the League and also to States mentioned in the Annex to the Covenant.

The conditions under which the Court shall be open to other States shall, subject to the special provisions contained in treaties in force, be laid down by the Council, but in no case shall such provisions place the parties in a position of inequality before the Court.

When a State which is not a Member of the League of Nations is a party to a dispute, the Court will fix the amount which that party is to contribute toward the expenses of the Court.

ART. 36. The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in Treaties and Conventions in force.

The Members of the League of Nations and the States mentioned in the Annex to the Covenant may, either when signing or ratifying the protocol to which the present Statute is adjoined, or at a later moment, declare that they recognize as compulsory, *ipso facto* and without special agreement, in relation to any other Member or State accepting the same obligation, the jurisdiction of the Court in all or any of the classes of legal disputes concerning:

(*a*) The interpretation of a treaty.

(*b*) Any question of international law.

(*c*) The existence of any fact which, if established, would constitute a breach of an international obligation.

(*d*) The nature or extent of the reparation to be made for the breach of an international obligation.

The declaration referred to above may be made unconditionally or on condition of reciprocity on the part of several or certain Members or States, or for a certain time.

In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court.

ART. 37. When a treaty or convention in force provides for the reference of a matter to a tribunal to be instituted by the League of Nations, the Court will be such tribunal.

ART. 38. The Court shall apply:

1. International conventions, whether general or particular, establishing rules expressly recognized by the contesting States;

2. International custom, as evidence of a general practice accepted as law;

3. The general principles of law recognized by civilized nations;

4. Subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

This provision shall not prejudice the power of the Court to decide a case *ex aequo et bono*, if the parties agree thereto.

CHAPTER III.— Procedure

Art. 39. The official languages of the Court shall be French and English. If the parties agree that the case shall be conducted in French, the judgment will be delivered in French. If the parties agree that the case shall be conducted in English, the judgment will be delivered in English.

In the absence of an agreement as to which language shall be employed, each party may, in the pleadings, use the language which it prefers; the decision of the Court will be given in French and English. In this case the Court will at the same time determine which of the two texts shall be considered as authoritative.

The Court may, at the request of the parties, authorize a language other than French or English to be used.

Art. 40. Cases are brought before the Court, as the case may be, either by the notification of the special agreement or by a written application addressed to the Registrar. In either case the subject of the dispute and the contesting parties must be indicated.

The Registrar shall forthwith communicate the application to all concerned.

He shall also notify the Members of the League of Nations through the Secretary General.

Art. 41. The Court shall have the power to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to reserve the respective rights of either party.

Pending the final decision, notice of the measures suggested shall forthwith be given to the parties and the Council.

Art. 42. The parties shall be represented by Agents.

They may have the assistance of Counsel or Advocates before the Court.

Art. 43. The procedure shall consist of two parts: written and oral.

The written proceedings shall consist of the communication to the judges and to the parties of cases, counter-cases and, if necessary, replies; also all papers and documents in support.

These communications shall be made through the Registrar, in the order and within the time fixed by the Court.

A certified copy of every document produced by one party shall be communicated to the other party.

The oral proceedings shall consist of the hearing by the Court of witnesses, experts, agents, counsel and advocates.

ART. 44. For the service of all notices upon persons other than the agents, counsel and advocates, the Court shall apply direct to the Government of the State upon whose territory the notice has to be served.

The same provision shall apply whenever steps are to be taken to procure evidence on the spot.

ART. 45. The hearing shall be under the control of the President or, in his absence, of the Vice-President; if both are absent, the senior judge shall preside.

ART. 46. The hearing in Court shall be public, unless the Court shall decide otherwise, or unless the parties demand that the public be not admitted.

ART. 47. Minutes shall be made at each hearing, and signed by the Registrar and the President.

These minutes shall be the only authentic record.

ART. 48. The Court shall make orders for the conduct of the case, shall decide the form and time in which each party must conclude its arguments, and make all arrangements connected with the taking of evidence.

ART. 49. The Court may, even before the hearing begins, call upon the agents to produce any document or to supply any explanations. Formal note shall be taken of any refusal.

ART. 50. The Court may, at any time, entrust any individual, body, bureau, commission or other organization that it may select, with the task of carrying out an inquiry or giving an expert opinion.

ART. 51. During the hearing any relevant questions are to be put to the witnesses and experts under the conditions laid down by the Court in the rules of procedure referred to in Article 30.

ART. 52. After the Court has received the proofs and evidence within the time specified for the purpose, it may refuse to accept any further oral or written evidence that one party may desire to present unless the other side consents.

ART. 53. Whenever one of the parties shall not appear before the Court, or shall fail to defend his case, the other party may call upon the Court to decide in favor of his claim.

The Court must, before doing so, satisfy itself, not only that it has jurisdiction in accordance with Articles 36 and 37, but also that the claim is well founded in fact and law.

ART. 54. When, subject to the control of the Court, the agents, advocates and counsel have completed their presentation of the case, the President shall declare the hearing closed.

The Court shall withdraw to consider the judgment.

The deliberations of the Court shall take place in private and remain secret.

ART. 55. All questions shall be decided by a majority of the judges present at the hearing.

In the event of an equality of votes, the President or his deputy shall have a casting vote.

ART. 56. The judgment shall state the reasons on which it is based.

It shall contain the names of the judges who have taken part in the decision.

ART. 57. If the judgment does not represent in whole or in part the unanimous opinion of the judges, dissenting judges are entitled to deliver a separate opinion.

ART. 58. The judgment shall be signed by the President and by the Registrar. It shall be read in open Court, due notice having been given to the agents.

ART. 59. The decision of the Court has no binding force except between the parties and in respect of that particular case.

ART. 60. The judgment is final and without appeal. In the event of dispute as to the meaning or scope of the judgment, the Court shall construe it upon the request of any party.

ART. 61. An application for revision of a judgment can be made only when it is based upon the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgment was given, unknown to the Court and also to the party claiming revision, always provided that such ignorance was not due to negligence.

The proceedings for revision will be opened by a judgment of the Court expressly recording the existence of the new fact, recognizing that it has such a character as to lay the case open to revision, and declaring the application admissible on this ground.

The Court may require previous compliance with the terms of the judgment before it admits proceedings in revision.

The application for revision must be made at latest within six months of the discovery of the new fact.

No application for revision may be made after the lapse of ten years from the date of the sentence.

ART. 62. Should a State consider that it has an interest of a legal nature which may be affected by the decision in the case, it may submit a request to the Court to be permitted to intervene as a third party.

It will be for the Court to decide upon this request.

ART. 63. Whenever the construction of a convention to which States other than those concerned in the case are parties is in question, the Registrar shall notify all such States forthwith.

Every State so notified has the right to intervene in the proceedings; but if it uses this right, the construction given by the judgment will be equally binding upon it.

ART. 64. Unless otherwise decided by the Court, each party shall bear its own costs.

65 Advisory opinions [illegible] same procedure as in judgments. Court may submit cases before them or any question

66 Registrar shall notify [illegible] [illegible] [illegible]; interrogations etc likely to [illegible] [illegible] [illegible]

APPENDIX XV

CRIMINAL CODE, 1909, CHAPTER 2[1]

Offenses against Neutrality

Sec. 9. Every citizen of the United States who, within the territory or jurisdiction thereof, accepts and exercises a commission to serve a foreign prince, state, colony, district, or people, in war, by land or by sea, against any prince, state, colony, district, or people, with whom the United States are at peace, shall be fined not more than two thousand dollars and imprisoned not more than three years.

Sec. 10. Whoever, within the territory or jurisdiction of the United States, enlists, or enters himself, or hires or retains another person to enlist or enter himself, or to go beyond the limits or jurisdiction of the United States with intent to be enlisted or entered in the service of any foreign prince, state, colony, district, or people, as a soldier, or as a marine or seaman, on board of any vessel of war, letter of marque, or privateer, shall be fined not more than one thousand dollars, and imprisoned not more than three years.

Sec. 11. Whoever, within the territory or jurisdiction of the United States, fits out and arms, or attempts to fit out and arm, or procures to be fitted out and armed, or knowingly is concerned in the furnishing, fitting out, or arming, of any vessel, with intent that such vessel shall be employed in the service of any foreign prince or state, or of any colony, district, or people, to cruise or commit hostilities against the subjects, citizens, or property of any foreign prince or state, or of any colony, district, or people, with whom the United States are at peace, or whoever issues or delivers a commission within the territory or jurisdiction of the United States, for any vessel, to the intent that she may be so employed, shall be fined not more than ten thousand dollars, and imprisoned not more than three years. And every such vessel, her tackle, apparel, and furniture, together with all materials, arms, ammunition, and stores, which may have been procured for the build-

[1] 35 U. S. Stat. 1089.

ing and equipment thereof, shall be forfeited; one half to the use of the informer, and the other half to the use of the United States.

SEC. 12. Whoever, within the territory or jurisdiction of the United States, increases or augments, or procures to be increased or augmented, or knowingly is concerned in increasing or augmenting, the force of any ship of war, cruiser, or other armed vessel, which, at the time of her arrival within the United States, was a ship of war or cruiser or armed vessel, in the service of any foreign prince or state or of any colony, district, or people, or belonging to the subjects or citizens of any such prince or state, colony, district, or people, the same being at war with any foreign prince or state or of any colony, district, or people, with whom the United States are at peace, by adding to the number of the guns of such vessel or by changing those on board of her for guns of a larger caliber or by adding thereto any equipment solely applicable to war, shall be fined not more than one thousand dollars and imprisoned not more than one year.

SEC. 13. Whoever, within the territory or jurisdiction of the United States, begins or sets on foot, or provides, or prepares the means for, any military expedition or enterprise, to be carried on from thence against the territory or dominions of any foreign prince or state, or of any colony, district, or people, with whom the United States are at peace, shall be fined not more than three thousand dollars and imprisoned not more than three years.

SEC. 14. The district courts shall take cognizance of all complaints, by whomsoever instituted, in cases of captures made within the waters of the United States or within a marine league of the coasts or shores thereof.

In every case in which a vessel is fitted out and armed, or attempted to be fitted out and armed, or in which the force of any vessel of war, cruiser, or other armed vessel is increased or augmented, or in which any military expedition or enterprise is begun or set on foot, contrary to the provisions and prohibitions of this Chapter; and in every case of the capture of a vessel within the jurisdiction or protection of the United States as before defined; and in every case in which any process issuing out of any court of the United States is disobeyed or resisted by any person having the custody of any vessel of war, cruiser, or other armed vessel of any foreign prince or state, or of any colony, district, or people, or of any subjects or citizens of any foreign prince or state, or of any colony, district, or people, it shall be lawful for the President, or such other person as he shall have empowered for that

purpose, to employ such part of the land or naval forces of the United States, or of the militia thereof, for the purpose of taking possession of and detaining any such vessel, with her prizes, if any, in order to enforce the execution of the prohibitions and penalties of this Chapter, and the restoring of such prizes in the cases in which restoration shall be adjudged; and also for the purpose of preventing the carrying on of any such expedition or enterprise from the territories or jurisdiction of the United States against the territory or dominion of any foreign prince or state, or of any colony, district, or people with whom the United States are at peace.

Sec. 15. It shall be lawful for the President or such person as he shall empower for that purpose, to employ such part of the land or naval forces of the United States, or of the militia thereof, as shall be necessary to compel any foreign vessel to depart the United States in all cases in which, by the laws of nations or the treaties of the United States, she ought not to remain within the United States.

Sec. 16. The owners or consignees of every armed vessel sailing out of the ports of, or under the jurisdiction of, the United States, belonging wholly or in part to citizens thereof, shall, before clearing out the same, give bond to the United States, with sufficient sureties, in double the amount of the value of the vessel and cargo on board, including her armament, conditioned that the vessel shall not be employed by such owners to cruise or commit hostilities against the subjects, citizens, or property of any foreign prince or state, or of any colony, district, or people, with whom the United States are at peace.

Sec. 17. The several collectors of the customs shall detain any vessel manifestly built for warlike purposes, and about to depart the United States, or any place subject to the jurisdiction thereof, the cargo of which principally consists of arms and munitions of war, when the number of men shipped on board, or other circumstances, render it probable that such vessel is intended to be employed by the owners to cruise or commit hostilities upon the subjects, citizens, or property of any foreign prince or state, or of any colony, district or people, with whom the United States are at peace, until the decision of the President is had thereon, or until the owner gives such bond and security as is required of the owners of armed vessels by the preceding section.

Sec. 18. The provisions of this chapter shall not be construed to extend to any subject or citizen of any foreign prince, state, colony, district, or people who is transiently within the United States and

enlists or enters himself on board of any vessel of war, letter of marque, or privateer, which at the time of its arrival within the United States was fitted and equipped as such, or hires or retains another subject or citizen of the same foreign prince, state, colony, district, or people who is transiently within the United States to enlist or enter himself to serve such foreign prince, state, colony, district, or people on board such vessel of war, letter of marque, or privateer, if the United States shall then be at peace with such foreign prince, state, colony, district, or people. Nor shall they be construed to prevent the prosecution or punishment of treason, or of any piracy defined by the laws of the United States.[1]

[1] The British Foreign Enlistment Acts of 1819 and 1870 may be found in 2 Lorimer, 476 *et seq.*

APPENDIX XVI

PROCEDURE IN PRIZE COURT

DISTRICT COURT OF THE UNITED STATES, SOUTHERN DISTRICT OF FLORIDA

The United States v. *Str. X*

PRIZE

LIBEL

To the Honorable A. B., Judge of said Court.

The libel of C. D., Attorney of the United States, for the Southern District of Florida, who libels for the United States and for all parties in interest against the steam vessel X, in a cause of prize, alleges:

That pursuant to instructions for that purpose from the President of the United States, W. M. of the United States Navy, in and with the United States Commissioned ship of war, the N., her officers and crew, did on the 22d day of April, in the year of our Lord One thousand eight hundred and ninety-eight, subdue, seize, and capture on the high seas, as prize of war, the said steam vessel X, and the said vessel and her cargo have been brought into the port and harbor of Key West, in the state of Florida, where the same now are, within the jurisdiction of this Honorable Court, and that the same are lawful prize of war and subject to condemnation and forfeiture as such.

WHEREFORE the said Attorney prays that the usual process of attachment of Prize causes may issue against the said vessel her tackle, apparel, furniture, and cargo, that Monition may issue citing all persons, having or claiming to have any interest or property in said Vessel and cargo to appear and claim the same; that the nature, amount, and value may be determined; that due and proper proofs may be taken and heard; and that all due proceedings being had, the said vessel X, together with her tackle, apparel, furniture, and cargo may, on the

final hearing of this cause, by the definitive sentence of this Court be condemned, forfeited, and sold, and the proceeds distributed according to law.

C. D.
U. S. Attorney, So. Dist. of Florida.

Key West, Fla., April 23d, 1898.

Let attachment and monition issue as prayed returnable on Monday the 9th day of May, 1898.

Entered as of course.

E. F., *Clerk*,
by G. H., *Dy. Clerk.*

ENDORSED:

Libel for Prize.—Filed Apr. 23d, 1898. E. F., *Clerk.*

CLAIMANTS' PETITION

To the Honorable A. B., Judge of the District Court of the United States in and for the Southern District of Florida, in admiralty.

The United States v. *The S. S. X and cargo*

PRIZE

And now comes into Court, I. J., and says that he is a citizen of Mobile, Ala., and agent in the United States for the firm of P. & P. of London, England, and that about 400,000 feet of pine lumber, being about one half of the cargo, is the sole and exclusive property of the said firm of P. & P., of London, England, and of no other person or persons, and that no person or persons whomsoever, enemies of the United States, have any right, title, or interest whatever in and to said cargo or any part thereof.

That the said firm consists solely of [names] who are subjects of Great Britain, residing at London, England.

And he further denies that the said cargo is lawful prize of war as alleged and set forth in the captor's libel exhibited and filed in this cause.

Now therefore, the said I. J., comes into Court and claims the right to the possession of the said portion of the said cargo for the said firm of P. & P., and prays that upon a hearing of this cause the Court will award to them restitution thereof free from charges for costs and expenses, and of such other and further relief in the premises as is right and just, and he will ever pray, etc.

I. J., *Agent for P. & P.*

I. J., being duly sworn, deposes and says that he is the authorized agent in the United States of said P. & P. of London, where all the members of the firm are and reside; that he knows the contents of the foregoing claim; that the matters and allegations therein contained are true as therein set forth; and that his knowledge of said matters is absolute and acquired by means of his agency in the United States for the said P. & P. and by reason of his connection with the shipment of the said cargo. I. J.

Sworn to and subscribed before me this 2nd day of May, 1898.

[SEAL] K. L., Clerk of the United States District Court for the Southern District of Alabama. M. N.

Proctor for Claimant.

ENDORSED:

Claim for one half Cargo.—Filed May 6th, 1898,

E. O., *Clerk.*

(Another claim for the other half was filed by another claimant.)

At a stated term of the District Court of the United States, for the Southern District of Florida, held in the United States Court Rooms at Key West, on the day of May, 1898.

Present:—

Honorable A. B., District Judge.

PETITION OF BAILEE OF OWNERS OF VESSEL

The United States v. *The Steamship X and her cargo*

And now O. P., intervening as bailee for the interest of [names] in the said Steamship X, her engines, boilers, tackle, apparel, furniture and equipment, appears before this Honorable Court and makes claim to the said steamship, etc., as the same are attached by the Marshal, under process of this Court, at the instance of the United States of America, under a libel against said steamship, her cargo, etc., as a prize of war, and the said O. P. avers that before and at the time of the alleged capture of said steamship, her cargo, etc., the above named [names], residing in England, and [names] residing in Spain, all of whom are Spanish subjects, were true and *bona fide* owners of the said vessel, her engines, boilers, tackle, apparel and furniture; that no other person was the owner thereof, that he was in possession thereof for the said owners, and that the vessel, if restored, will belong to the said owners, and he denies that she was lawful prize.

Wherefore the said O. P., for and in behalf of the said owners, for whom he is duly authorized to make this claim, prays to be admitted to defend accordingly, and to show cause pursuant to the terms of the monition issued herein and served upon the said steamship, and upon the master thereof, as bailee, why the said steamship, her engines, etc., were not liable to be treated enemy's property at the time and place, and under the circumstances of the alleged capture, and why she should not be condemned as lawful prize of war, but should be restored with damages and costs.

O. P.

Sworn to before me this 18th day of May, 1898.

[SEAL] G. H., *Dy. Clerk.*

Q. R.
Proctor for Claimant.

ENDORSED:

Claim to X by O. P. Q. R., *Proctor for Claimant.*—Filed May 18th, 1898. E. F., *Clerk.*

U. S. DISTRICT COURT, SOUTHERN DISTRICT OF FLORIDA

The United States v. *The Steamship X and her cargo*

TEST AFFIDAVIT

SOUTHERN DISTRICT OF FLORIDA, S.S.

O. P. being duly sworn, deposes and says:—

1. I am the claimant herein and have verified the claim on knowledge derived from my position as master of the vessel about three and a half years and from my official communications with the ship owners and their representatives; the names and residences of the part owners I have learned since my examination *in preparatorio*, from cables to my counsel to the said owners.

2. The X is a Spanish merchant vessel, and since I have been in command of her as aforesaid has traded between ports in England and Spain and the United States and West Indies; the vessel carries no passengers or mails, but is exclusively a cargo carrier.

3. In the ordinary course of her said business as a common carrier, the vessel, in the month of April, 1898, loaded a full cargo of lumber, at Ship Island, Miss., and on the 14th of April, 1898, the vessel and cargo were cleared at the Custom House in Scranton, Miss. The cargo was destined for Rotterdam, in the Kingdom of Holland, but the vessel was cleared coastwise from Scranton for Norfolk, in the State of

Virginia, to which port the steamer was bound for coals. In the ordinary course of such a voyage the foreign clearance of a vessel for Rotterdam would have been obtained and issued from the Custom House in Norfolk.

The vessel was laden at the loading port under the agency of W. S. K. & Co., an American firm as I am informed and believe, and conformed there in all things to the laws and regulations of the United States and of said port. She was detained at Ship Island by the low water on the bar until April 19th, 1898, between 8 and 9 o'clock A.M., when she sailed from said place and proceeded on her voyage toward Norfolk, Va., as aforesaid.

But for her capture and detentions as heretofore set forth, she would have reached Norfolk, and would have coaled and sailed from said port prior to May 21st, 1898.

4. It appeared from the ship's papers delivered to the captors, and was a fact, that her cargo was all taken on board prior to May 21st, 1898. And as I am informed and believe, the vessel was not otherwise excluded from the benefits and privileges of the President's Proclamation of April 26th, 1898.

5. At all times before the ship's seizure on April 22d, 1898, I and all my officers were ignorant that war existed between Spain and the United States, and the vessel was bound and following the ordinary course of her voyage.

6. While on the said voyage and in due prosecution thereof, at about 7 or 7.30 of the clock in the morning of April 22d, 1898, said steamship X being then about eight or nine miles from Sand Key Light, was seized and wrongfully captured by the United States ship of war N., under the command of a line officer of the United States Navy, and by means of a prize crew then and there placed on board, was forcibly brought into this port of Key West. On being stopped by said United States ship of war, N., and being informed of the existence of war, the master and officers of the X submitted without resistance to seizure and to the placing of a prize crew on board of said vessel, proceeding therewith, under her own steam, into port.

7. Deponent is informed and believes that by the existing policy of the Government of the United States, as evidenced by the repeated declarations of its Executive, and by the Proclamation of the President of the United States, issued and published April 26th, 1898, as well as upon principles in harmony with the present views of nations and sanctioned by recent practice, in accordance with which the Pres-

ident has directed that the war should be conducted, the steamship X, at the time and place, and in the circumstances under which she was seized, was not liable to be treated as enemy's property, but on the contrary, having sailed from a port of the United States prior to the 21st of April, 1898, and being bound to another port of the United States, which in the ordinary course of her voyage she would have reached and left, with her coals, long prior to May 21st, 1898, was exempt from capture as prize of war.

O. P.

Sworn to before me this 18th day of May, 1898.
[SEAL] G. H., *Dy. Clerk.*

ENDORSED:
Test affidavit for X.—Filed May 16th, 1898. E. F., *Clerk.*

IN THE DISTRICT COURT OF THE UNITED STATES,
SOUTHERN DISTRICT OF FLORIDA

United States v. *Spanish Steamer X and Cargo*

PRIZE. DECREE

This cause having come on to be heard upon the allegations of the libel, the claims of the master, and testimony taken *in preparatorio*, and the same having been fully heard and considered, and it appearing to the Court that the said steamer X was enemy's property, and was upon the high seas and not in any port or place of the United States upon the outbreak of the war, and was liable to condemnation and seizure, it is ordered that the same be condemned and forfeited to the United States as lawful prize of war; but it appearing that the cargo of said steamer was the property of neutrals, and not contraband or subject to condemnation and forfeiture, it is ordered that said cargo be released and restored to the claimants for the benefit of the true and lawful owners thereof.

It is further ordered that the Marshal proceed to advertise and sell said vessel, and make deposit of the proceeds in accordance with law.

A. B., *Judge.*
Key West, Florida, May 27th, 1898.

ENDORSED:
Decree.—Filed May 27th, 1898. E. F., *Clerk.*

FORM OF DECREE OF DISTRIBUTION

DISTRICT COURT OF THE UNITED STATES, SOUTHERN DISTRICT OF FLORIDA

The United States PRIZE

v. Captured, ... 1898

.....

.....

A Final Decree of Condemnation of Vessel and Cargo having been pronounced in this Case, and no Appeal being taken, and it Appearing to the Court that the Gross Proceeds of the Sales are as follows,— to-wit,—

Vessel,
Cargo,
Total,

And the Costs, Expenses and Charges as taxed and allowed are as follows,—

Marshal's Fees and Charges including all expenses of Sales, Advertising, and Auctioneer's Commissions,
District Attorney's Fees,
Prize Commissioner's Fees and Expenses,
Clerk's Fees,
Leaving a Net Residue of.....($.....)

And it appearing to the Court upon the Report of the Prize Commissioner, that the U. S. S. .....
Commanding, was the sole Capturing Vessel, and entitled to share in the Prize, and was of Superior Force to the Captured Vessel, and it appearing that the Marshal has paid and satisfied the Bills of Costs and Charges as herein taxed, and allowed, it is ORDERED that the same be paid to him out of the money on Deposit with the Assistant Treasurer of the United States subject to the Court in this case, and it is FURTHER ORDERED that the said Residue of the Gross Proceeds deposited with the Assistant Treasurer in this Case be paid into the Treasury of the United States, for Distribution, one half to the officers and crew of said ———— and one half to the United States.[1]

.....

Judge of the District Court of the United States, for the Southern District of Florida.

[1] See U. S. Statute cited in Sec. 141 (*c*), p. 344.

APPENDIX XVII

DIGEST OF IMPORTANT CASES ARRANGED UNDER TITLES

16. Precedent and Decisions

Bolton v. *Gladstone*, 5 East, 155

In an action on a policy of insurance in 1804 on a Danish ship and cargo warranted neutral and captured by a French ship of war (Denmark being at peace with France), it appeared that the court in which the Danish ship was libeled declared her good and lawful prize. Held by Ellenborough C. J., "that all sentences of foreign courts of competent jurisdiction to decide questions of prize" were to be received "as conclusive evidence in actions upon policies of assurance, upon every subject immediately and properly within the jurisdiction of such foreign courts, and upon which they have professed to decide judicially."

United States v. *Rauscher*, 119 U. S. 407

The defendant was extradited from England on the charge of murder committed on an American vessel on the high seas. He was indicted in the United States Circuit Court, not for murder, but for a minor offense not included in the treaty of extradition. It was held that he could not be tried for any other offense than murder until he had had an opportunity to return to the country from which he was taken for the purpose alone of trial for the offense specified in the demand for his surrender.

22. Recognition of New States

Harcourt v. *Gaillard*, 12 Wheat. 523

This case is fully stated in the text, p. 47.

Williams v. *The Suffolk Insurance Company*, 13 Pet. 415

This case held that when the executive branch of the government, which is charged with the foreign relations of the United States shall,

in its correspondence with a foreign nation, assume a fact in regard to the sovereignty of any island or country, it is conclusive on the judicial department.

State of Mississippi v. *Johnson*, 4 Wall. 475, 501

This case held that "a bill praying an injunction against the execution of an act of Congress by the incumbent of the presidential office cannot be received, whether it describes him as President or as a citizen of a state."

Jones v. *United States*, 137 U. S. 202

This case held that the determination of the President, under U. S. Rev. Sts., § 5570, that a guano island shall be considered as appertaining to the United States, may be declared through the Department of State, whose acts in this regard are in legal contemplation the acts of the President.

56. Vessels

Wildenhus's Case, 120 U. S. 1

This case held that the Circuit Court of the United States has jurisdiction to issue a writ of *habeas corpus* to determine whether one of the crew of a foreign vessel in a port of the United States, who is in the custody of the state authorities, charged with the commission of a crime, within the port, against the laws of the state, is exempt from local jurisdiction under the provisions of a treaty between the United States and the foreign nation to which the vessel belongs. The Convention of March 9, 1880, between Belgium and the United States was considered.

67. Extradition

In the Matter of Metzger, 5 How. 176, 188

This case held that the Treaty with France of 1843 provides for the mutual surrender of fugitives from justice and that where a district judge decided that there was sufficient cause for the surrender of a person claimed by the French Government, and committed him to custody to await the order of the President of the United States, the Supreme Court had no jurisdiction to issue a *habeas corpus* for the purpose of reviewing that decision.

103. Noncombatants

Alcinous v. *Nigreu*, 4 Ellis and Blackburn, 217

This was an action for work and labor brought by a Russian against an Englishman during the Crimean war. Lord Campbell said: "The contract having been entered into before the commencement of hostilities is valid; and, when peace is restored, the plaintiff may enforce it in our Courts. But, by the law of England, so long as hostilities prevail he cannot sue here."

106. Personal Property of Enemy Subjects

Brown v. *United States*, 8 Cr. 110

It was held that British property within the territory of the United States at the beginning of hostilities with Great Britain could not be condemned without a legislative act, and that the act of Congress declaring war was not such an act. The property in question was the cargo of an American ship and was seized as enemy's property in 1813, nearly a year after it had been discharged from the ship.

112. Privateers

United States v. *Baker*, 5 Blatchford, 6

This was an indictment in 1861 against Baker, the master of a private armed schooner, and a part of the officers and crew for piracy. They claimed to have acted under a commission from Jefferson Davis, President of the Confederate States of America. Nelson J. charged the jury at length; but they failed to agree on a verdict.

114. Capture and Ransom

The Grotius, 9 Cr. 368

The question in this case, which was heard in 1815, was whether the capture was valid. The master, the mate, and two of the seamen swore that they did not consider the ship to have been seized as prize, and that the young man who was put on board by the captain of the privateer was received and considered as a passenger during the residue of the voyage. It was held that the validity of the capture of the vessel as a prize of war was sufficiently established by the evidence.

115. Postliminium

The Two Friends, 1 C. Rob. 271

An American ship was taken by the French in 1799 when the relations between France and America were strained. She was recaptured by the crew, some of whom were British seamen. They were awarded salvage.

The Santa Cruz, 1 C. Rob. 49

A Portuguese vessel was taken by the French in 1796 and retaken by English cruisers a few days later. It was held that the law of England, on recapture of property of allies, is the law of reciprocity; it adopts the rule of the country to which the claimant belongs.

117. Non-hostile Relations of Belligerents

The Venus, 4 C. Rob. 355

A British vessel went to Marseilles, under cartel, for the exchange of prisoners, and there took on board a cargo and was stranded and captured on a voyage to Port Mahon. Held that the penalty was confiscation.

The Sea Lion, 5 Wall. 630

This case held that a license from a "Special Agent of the Treasury Department and Acting Collector of Customs" in 1863 to bring cotton "from beyond the United States military lines" had no warrant from the Treasury Regulations prescribed by the President conformably to the act of 13th July, 1861.

121. Termination of War by Treaty of Peace

The Schooner Sophie, 6 C. Rob. 138

A British ship, having been captured by the French, was condemned in 1799 by a French Consular Court in Norway. Other proceedings were afterwards had, on former evidence in the case, in the regular Court of Prize in Paris and the sentence of the Consular Court was affirmed. Sir William Scott said: "I am of opinion, therefore, that the intervention of peace has put a total end to the claim of the British proprietor, and that it is no longer competent to him to look back to the enemy's title, either in his own possession, or in the hands of neutral purchasers."

128. Neutral Territorial Jurisdiction

The Caroline; People v. *McLeod*, 25 Wendell, 483

During the Canadian rebellion of 1837–1838, a British force crossed the Niagara River into American jurisdiction and destroyed the American vessel *Caroline*, which was engaged in transporting men and supplies to the insurgents. One Durfee, an American, was killed. The United States protested against the violation of her jurisdiction but the British government contended that the seizure of the *Caroline* was excusable on the ground stated by Mr. Webster himself as "a necessity of self-defense, instant, overwhelming, leaving no choice of means and no moment for deliberation." The controversy was renewed by the arrest, in 1841, in the State of New York, of one McLeod, and his indictment for the murder of Durfee. Great Britain demanded the release of McLeod, stating that as he was an agent of the British Government engaged at the time in a public duty, he could not be held amenable to the laws of any foreign jurisdiction. Mr. Webster, then Secretary of State, admitted the correctness of the British contention, but seemed powerless to obtain the release of McLeod, on account of the inherent weakness of the Federal system.[1] The Supreme Court of the State of New York held, in *People* v. *McLeod*, that McLeod could be proceeded against individually on an indictment for arson and murder, though his acts had been subsequently averred by the British Government. This view was generally condemned by jurists;[2] but the difficulty soon ended by the acquittal of McLeod.

The Appam, 37 S. Ct. 337

In 1916, the *Appam*, a captured British vessel, was brought into an American port by a German prize crew for sequestration during the war. The American court assumed jurisdiction and decreed restoration to the British owners, saying: "The principles of international law recognized by this government . . . will not permit the ports of the United States to be thus used by belligerents. . . . The violation of American neutrality is the basis of jurisdiction, and the admiralty courts may order restitution for a violation of such neutrality."

The Twee Gebroeders, 3 C. Rob. 162

This case holds that a ship within three miles of neutral territory cannot send boats beyond the line of division for the purpose of capturing enemy vessels.

[1] See 2 Moore, pp. 25 ff.

[2] See *Ibid.*, p. 26.

131. Positive Obligations of a Neutral State

The Alabama Cases

Up to the period of the American civil war the opinion obtained among many that a vessel of war might be sent to sea from a neutral port with the sole liability to capture as legitimate contraband, with the exception that, if she was ready to go in condition for immediate warlike use, it was the duty of the neutral to prevent her departure. In 1863 during the American civil war this view was practically taken by the British court in the case of the *Alexandra*;[1] but the vessel after her release was taken on a new complaint at Nassau and held until after the end of the war. Lawrence says that the attitude of the British Government in regard to this vessel, its purchase in 1863 of two iron-clad rams of the Messrs. Laird for the navy, the construction, destination, and intended departure of which occasioned the now famous correspondence between Lord Russell and Mr. Adams, the detention of the *Pampero*, which was seized in the Clyde, until the end of the American civil war, and the preventing the sale of "Anglo-Chinese gunboats against the advice of its own law officers," indicated that that government "had uneasy doubts as to the validity of the doctrine laid down in their law-courts and maintained in their dispatches."[2] This doctrine would admit of a ship of war going to sea from a neutral port without arms, which she might receive on the high seas from another vessel which had sailed from the same port. For example, the *Alabama* left Liverpool in 1862 ready for warlike use, but without warlike equipment. This and her crew were received on the high seas from other vessels which had cleared from Liverpool; and her career as a Confederate cruiser then began. The cases of the *Florida*, the *Georgia*, and the *Shenandoah* were almost identical. The spoliations committed by these vessels led to the *Alabama* claims, the British maintaining that the American contention that it was the duty of a neutral to prevent the departure of all vessels that could reasonably be expected as about to be used for warlike purposes was unsound.[3]

The *Alabama* case and kindred cases have produced much specula-

[1] Attorney Gen'l *v.* Sillem *et als*, 2 Hurlstone *v.* Coltman, Exchequer Reports, 431.

[2] Page 544. For the cases of the "Pampero" and the two iron-clad rams, see Wheat. D., note p. 572 *et seq.*

[3] The American view may be found in Cushing's "Treaty of Washington," and the British in Bernard's "Historical Account of the Neutrality of Great Britain during the American Civil War."

tion as to the establishment of a true and correct rule. After the enactment of the American neutrality statutes in 1818, there were numerous decisions of the United States courts to the effect that the intent was to govern, that is, if the purpose was to send articles of contraband, with the risk of capture, to a belligerent's country for sale, the neutral government had nothing to say, but if the purpose was to send out a vessel to prey on the commerce of a friendly power, then the neutral government should prevent her departure. It must be admitted that the rule is hardly satisfactory.[1]

Hall contends that the true test should be "the character of the ship itself." If built for warlike use, the vessel should be detained; if for commercial purposes, she should be allowed to depart. This rule has at least one element of fairness and sense. It is not always possible to get at intent, but the character of the vessel is likely to reward observation and scrutiny.[2]

Regret has been expressed by many writers that the award of the arbitrators appointed under the Treaty of Washington of 1871, upon the *Alabama* claims, has proved of so little value as a precedent upon the liability of a neutral power for the departure from its ports of vessels fitted out and equipped for the destruction of belligerent commerce.

Article VI of the Treaty provided that the Arbitrators should be "governed by the following three rules, which are agreed upon by the high contracting parties as rules to be taken as applicable to the case, and by such principles of international law not inconsistent therewith as the Arbitrators shall determine to have been applicable to the case.

"A neutral Government is bound—

"First to use due diligence to prevent the fitting out, arming, or equipping, within its jurisdiction, of any vessel which it has reasonable ground to believe is intended to cruise or to carry on war against a Power with which it is at peace; and also to use like diligence to prevent the departure from its jurisdiction of any vessel intended to cruise or carry on war as above, such vessel having been specially adapted, in whole or in part, within such jurisdiction, to warlike use.

"Secondly, not to permit or suffer either belligerent to make use of its ports or waters as the base of naval operations against the other, or for the purpose of the renewal or augmentation of military supplies or arms, or the recruitment of men.

"Thirdly, to exercise due diligence in its own ports and waters, and,

[1] See Wheat. D., note p. 553 *et seq.* [2] Hall, p. 612.

as to all persons within its jurisdiction, to prevent any violation of the foregoing obligations and duties."

The British Government declared that it "cannot assent to the foregoing rules as a statement of principles of international law which were in force at the time when the claims mentioned" arose but "in order to evince its desire of strengthening the friendly relations between the two countries and of making satisfactory provision for the future, agrees that in deciding the questions between the two countries arising out of those claims, the Arbitrators should assume that her Majesty's Government had undertaken to act upon the principles set forth in these rules.

"And the high contracting parties agree to observe these rules as between themselves in the future, and to bring them to the knowledge of other maritime Powers, and to invite them to accede to them." [1]

The phrases "due diligence" and "base of naval operations" gave rise to a difference of opinion, as also the last part of paragraph "First" relative to preventing the departure of vessels intended to carry on war and adapted for warlike use.

The contentions and the decision relative to the last point were as follows:

1. The British Contention

This was that the only duty of Great Britain applied to the departure of the vessel originally, and that, if she escaped, and afterwards as a duly commissioned war-ship entered a British port, there was no obligation to detain her.[2] The case of the *Schooner Exchange* v. *M'Faddon* [3] was cited, in which a libel was filed in 1811 against that vessel, then in American waters, as an American vessel unlawfully in the custody of a Frenchman, the libelants contending that in December, 1810, while pursuing her voyage she had been forcibly taken by a French vessel at sea. The Attorney General suggested that she was a public armed vessel of France, visiting our waters as a matter of necessity. Chief Justice Marshall decided that as a public vessel of war coming into our ports and demeaning herself in a friendly manner she was exempt from the jurisdiction of the country.

[1] U. S. Treaties, 481.
[2] Argument of Sir R. Palmer in the "Argument at Geneva," published by the United States at p. 426 *et seq.*
[3] 7 Cranch, 116.

2. The American Contention

This was that if a Confederate cruiser, which had originally escaped, afterwards came into a British port, her commission was no protection, as it was given by a government whose belligerency only, not sovereignty, had been acknowledged.[1]

3. The Award of the Tribunal

This award exceeded the claim of the United States in deciding that "the effects of a violation of neutrality committed by means of the construction, equipment and armament of a vessel are not done away with by any commission which the Government of the belligerent power, benefited by the violation of neutrality, may afterwards have granted to that vessel; and the ultimate step, by which the offense is completed, cannot be admissible as a ground for the absolution of the offender, nor can the consummation of his fraud become the means of establishing his innocence," that "the privilege of extraterritoriality accorded to vessels of war has been admitted into the law of nations, not as an absolute right, but solely as a proceeding founded on the principles of courtesy and mutual deference between different nations, and therefore can never be appealed to for the protection of acts done in violation of neutrality," and that "the absence of a previous notice cannot be regarded as a failure in any consideration required by the law of nations, in those cases in which a vessel carries with it its own condemnation." [2]

That the decision of the Tribunal has not become a precedent is quite generally conceded. Lawrence asserts that the award seems "to have been dictated more by a regard for equitable considerations than by reference to principles hitherto accepted among nations"; that other nations have refused to accede to the "three rules" and "that it has been doubted whether they bind the two powers which originally contracted to observe them." [3]

It is to be observed, however, that at the present time a cruiser is of such peculiar construction and depends for her efficiency on such a large outlay of money that an honest neutral is likely to have abundant proof of her character and hence the best reasons for detaining her.

[1] Argument of Mr. Evarts in "Argument at Geneva," p. 448 *et seq.*
[2] Decision and Award of the Tribunal of Arbitration in 3 Wharton, § 402 a.
[3] Pp. 553, 554.

133. Contraband

The Peterhoff, 5 Wall. 28, 62

The *Peterhoff*, a British steamer, bound from London to Matamoras in Mexico, was seized in 1863 by a United States vessel. It was held that the mouth of the Rio Grande was not included in the blockade of the ports of the Confederate states; that neutral commerce with Matamoras, a neutral town on the Mexican side of the river, except in contraband destined to the enemy, was entirely free; and that trade between London and Matamoras, even with intent to supply, from Matamoras, goods to Texas, then an enemy of the United States, was not unlawful on the ground of such violation. Questions of contraband were also considered, and Chief Justice Chase concluded: "Considering . . . the almost certain destination of the ship to a neutral port, with a cargo, for the most part, neutral in character and destination, we shall not extend the effect of this conduct of the captain to condemnation, but we shall decree payment of costs and expenses by the ship as a condition of restitution."

The Commercen, 1 Wheat. 382

In 1814, during the war between the United States and Great Britain, a Swedish vessel bound from Limerick, Ireland, to Bilboa, Spain, with cargo of barley and oats, the property of British subjects, was seized and brought into an American port. The cargo was shipped for the sole use of the British forces in Spain. The cargo was condemned.

134. Penalty for Carrying Contraband

The Jonge Tobias, 1 C. Rob. 329

This was a case of a ship taken on a voyage from Bremen to Rochelle, laden with tar. The ship was claimed by one Schraeder and others. Schraeder, who was owner of the cargo, withheld his claim, knowing it would affect the ship. The cargo and his share of the vessel were condemned in 1799, and an attestation was required of the other part owners of the vessel that they had no knowledge of the contraband goods.

The Magnus, 1 C. Rob. 31

A ship laden with coffee and sugars was taken on a voyage from Havre to Genoa. The claimant of the cargo was a Swiss merchant. Held, that while interior countries are allowed to export and import through an enemy's ports, strict proof of property is required. The cargo was condemned.

135. Unneutral Service

The Kow-Shing Affair, Takahashi, 24–51

On July 25, 1894, a Japanese war-ship stopped the *Kow-Shing*, a British transport engaged in carrying Chinese troops. After fruitless parleying, the *Kow-Shing* refusing to surrender as her British captain was overawed by the Chinese he was carrying, the *Kow-Shing* was sunk by the Japanese war-ship. The affair produced great excitement in England, and there was a demand of satisfaction from Japan on the ground that war had not been declared between that country and China. The facts appearing that a declaration of war is not necessary, and that the British captain of the transport was under compulsion, the affair was referred to Mr. Choate, the American Ambassador to Great Britain, as referee.

The Friendship, 6 C. Rob. 420, 429

This was the case of an American ship bound on a voyage from Baltimore to Bordeaux, with a light cargo and ninety French mariners as passengers, shipped by direction of the French minister in America. In condemning the ship and cargo in 1807, Sir William Scott said: "It is the case of a vessel letting herself out in a distinct manner, under a contract with the enemy's government, to convey a number of persons, described as being in the service of the enemy, with their military character traveling with them, and to restore them to their own country in that character."

The Orozembo, 6 C. Rob. 430

An American vessel, having been ostensibly chartered by a merchant at Lisbon "to proceed in ballast to Macao, and there to take a cargo to America," was afterwards, by his directions, fitted up for

three military officers and two persons in civil departments in the government of Batavia, who had come from Holland to take their passage to Batavia, under the appointment of the Government of Holland. The vessel was condemned in 1807 as a transport, let out in the service of the government of Holland.

The Atalanta, 6 C. Rob. 440

A Bremen ship and cargo were captured on a voyage from Batavia to Bremen, in July, 1807 having come last from the Isle of France, where a packet, containing dispatches from the government of the Isle of France to the Minister of Marine at Paris, was taken on board by the master and one of the supercargoes, and was afterwards found concealed in the possession of the second supercargo. Both ship and cargo were condemned.

139. Violation of Blockade

The Juffrow Maria Schroeder, 3 C. Rob. 147

"Where a ship has contracted the guilt by sailing with an intention of entering a blockaded port, or by sailing out, the offense is not purged away till the end of the voyage; till that period is completed, it is competent to any cruisers to seize and proceed against her for that offense." In this case the plea of remissness in the blockading force in permitting vessels to go in or out, was held to avail, and the ship, which was a Prussian one taken on a voyage from Rouen to Altona and proceeded against for a breach of the blockade of Havre, was restored.

140. Continuous Voyages

The Hart, 3 Wall. 559, 560

"Neutrals who place their vessels under belligerent control and engage them in belligerent trade; or permit them to be sent with contraband cargoes under cover of false destination to neutral ports, while the real destination is to belligerent ports, impress upon them the character of the belligerent in whose service they are employed, and cannot complain if they are seized and condemned as enemy property." See the preceding case, *The Bermuda*, 3 Wall. 514.

The Maria, 5 C. Rob. 365

This was a case of a continuous voyage in the colonial trade of the enemy. The Court reviewed former cases and asked for further proof on the facts. On such further proof the court decreed restitution. See *The William*, 5 C. Rob. 385.

141. Prize and Prize Courts

The Ship La Manche, 2 Sprague, 207

This case held that captors are not liable for damages where the vessel captured presents probable cause for the capture, even though she was led into the predicament involuntarily, and by the mistakes of the revenue officers of the captor's own government.

The Zamora, L. R. [1916], 2 A. C. 77

The British War Office in 1915, acting under an Order in Council, requisitioned before condemnation certain copper of the cargo of the *Zamora*, a neutral Swedish vessel. The Court ignoring the Order, so far as in conflict with international law, which by tradition and in accord with the prize Act of 1864 was the law applicable in prize courts, said: "If the court is to decide judicially in accordance with what it conceives to be the law of nations, it cannot, even in doubtful cases, take its directions from the Crown, which is a party to the proceedings. It must itself determine what the law is according to the best of its ability, and its view, with whatever hesitation it be arrived at, must prevail over any executive order. Only in this way can it fulfill its function as a Prize Court, and justify the confidence which other nations have hitherto placed in its decisions."

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